



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 16 नवम्बर, 2023 / 25 कार्तिक, 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 26th August, 2023

No. Shram (A) 3-2/2023 (Awards) L.C.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the

publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh i.e. “e-Gazette” :—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/Order
1.	Ref. 147/2022	Sh. Vivek Gupta	Wipro Enterprises	01-06-2023
2.	Ref. 48/2022	Sh. Rajat Bansal	Registrar of Horticulture & Ors.	01-06-2023
3.	Ref. 45/2022	Sh. Mohit Kumar	Registrar of Horticulture & Ors.	01-06-2023
4.	Ref. 13/2021	Sh. Rakesh Kumar	M/s Smilax Healthcare Drugs Co.	01-06-2023
5.	Ref. 173/2022	Sh. Harish Kumar	M/s Comed Chemical Ltd.	01-06-2023
6.	Ref. 154/2022	Sh. Hemant Singh	B.E. Pharmaceuticals Ltd.	01-06-2023
7.	Ref. 178/2022	Smt. Rumali	M/s Him Teknoforge Ltd.	01-06-2023
8.	Ref. 155/2022	Sh. Gurcharan Dass	M/s Vaishnavi Kosmetices (P) Ltd.	01-06-2023
9.	Ref. 160/2021	Smt. Shankuntla	M/s SBS Biotech Nahan.	01-06-2023
10.	Ref. 121/2019	Sh. Mojamil Alam	M/s Vimal Industries Kala-Amb.	01-06-2023
11.	Ref. 132/2020	Sh. Sunil Kumar	M/s Gowthami Hydro Electric & Ors.	01-06-2023
12.	Ref. 192/2020	Sh. Rajwant Singh	M/s Gowthami Hydro Electric & Ors.	01-06-2023
13.	Ref. 196/2020	Sh. Devinder Singh	M/s Gowthami Hydro Electric & Ors.	01-06-2023
14.	Ref. 197/2020	Sh. Pawan Kumar	M/s Gowthami Hydro Electric & Ors.	01-06-2023
15.	Ref. 198/2020	Sh. Glower Singh	M/s Gowthami Hydro Electric & Ors.	01-06-2023
16.	Ref. 206/2020	Sh. Rajwant Raj	M/s Gowthami Hydro Electric & Ors.	01-06-2023
17.	Ref. 207/2020	Sh. Mohinder Singh	M/s Gowthami Hydro Electric & Ors.	01-06-2023
18.	Ref. 208/2020	Sh. Kalam Singh	M/s Gowthami Hydro Electric & Ors.	01-06-2023
19.	Ref. 209/2020	Sh. Gurdyal Singh	M/s Gowthami Hydro Electric & Ors.	01-06-2023
20.	Ref. 113/2019	Sanatan Dharam Sabha Workers Union.	Manager Sanatan Dharam Sabha.	01-06-2023
21.	Ref. 29/2023	Sh. Sushil Kumar	M/s Ion Healthcare (P) Ltd.	01-06-2023

22.	Ref. 46/2023	Sh. Vipul Kumar	M/s Ion Healthcare (P) Ltd.	01-06-2023
23.	Ref. 48/2023	Sh. Humesh Kumar	M/s Ion Healthcare (P) Ltd.	01-06-2023
24.	Ref. 168/2020	Ms. Meera Garg	International Institute of Invincible.	01-06-2023
25.	Ref. 112/2018	Workers Union	M/s Carlsberg India (P) Ltd.	01-06-2023
26.	Ref. 10/2016	Sh. Sohail Akhtar	M/s Carlsberg India (P) Ltd.	01-06-2023
27.	Ref. 35/2019	Sh. Ashish Ojha	Groupe SEB	01-06-2023
28.	App. 55/2019	Sh. Satya Dev	D.F.O. Theog	01-06-2023
29.	App. 56/2019	Sh. Tara Dutt	D.F.O. Theog	01-06-2023
30.	App. 57/2019	Sh. Hem Raj	D.F.O. Theog	01-06-2023
31.	App. 146/2019	Sh. Hema Nand	D.F.O. Theog	01-06-2023
32.	App. 16/2020	Sh. Suresh Kumar Mehta.	M.D. Alchemist Reality Ltd.	01-06-2023

By order,

AKSHAY SOOD,
Secretary (Lab. & Emp.)

**IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 147 of 2022

Instituted on : 14-03-2022

Decided on : 01-06-2023

Vivek Gupta s/o Shri Khushi Ram, r/o Village and Post Office Chhatipura Kunjhal, Tehsil Baddi, District Solan, H.P. . . Petitioner.

Versus

The Occupier/Factory Manager M/s Wipro Enterprises (P) Ltd., Unit-II, 87-A, EPIP, Phase-1, Jharmajri, Tehsil Baddi, District Solan, H.P. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Shri Rajeev Sharma, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 25.02.2022, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Vivek Gupta s/o Shri Khushi Ram, r/o Village and Post Office Chhatipura Kunjhal, Tehsil Baddi, District Solan, H.P. by the Occupier/Factory Manager M/s Wipro Enterprises (P) Ltd., Unit-II, 87-A, EPIP, Phase-1, Jharmajri, Tehsil Baddi, District Solan, H.P. complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief including reinstatement in service, seniority, amount of back-wages, past service benefits and compensation the above aggrieved workman is entitled to from the above management/employer?”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 04.03.2022 and thereafter *w.e.f.* 14.03.2022, this Tribunal is issuing notices for the service of the petitioner on the address available on record but neither the petitioner nor any Authorized Representative/Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue his reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having the knowledge of the present dispute and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st Day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 48 of 2022

Instituted on : 14-02-2022

Decided on : 01-06-2023

Rajat Bansal s/o Shri Kaka Ram, r/o Village Jamlog (Anji), P.O. Vasni, Tehsil Pachhad,
 District Sirmaur, H.P. . . Petitioner.

Versus

1. M/s Friends Associates, HQ # 105 Sector-18, Panchkula Haryana.
2. M/s Rainbow Enterprises, HQ Shimla H.P.
3. The Registrar University of Horticulture and Forestry, Nauni, District Solan, H.P. . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Nemo
For the Respondent No. 1	:	Shri Prateek Kumar, Adv.
For the Respondent No. 2	:	Shri Anirudh Singh, Adv.
For the Respondent No. 3	:	Shri Umesh Sanoria, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 16.12.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Rajat Bansal s/o Shri Kaka Ram, r/o Village Jamlog (Anji), P.O. Vasni, Tehsil Pachhad, District Sirmaur, H.P. by the (1) M/s Friends Associates, HQ # 105 Sector-18, Panchkula Haryana (2) M/s Rainbow Enterprises, HQ Shimla HP (3) The Registrar University of Horticulture and Forestry, Nauni, District Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, to what relief including reinstatement in service, seniority, amount of back-wages, past service benefits and compensation the above aggrieved workman is entitled to from the above managements/employers?”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 14.01.2022 and thereafter *w.e.f.* 14.02.2022, this Tribunal had issued notice for the service of the petitioner upon which Shri R.K. Khidta, Advocate had appeared on behalf of the petitioner on 19.04.2022 and the case was listed for filing of statement of claim on 25.05.2022, 25.06.2022, 14.09.2022 and 01.10.2022 but no statement of claim has been filed on behalf of the petitioner and thereafter again notices were issued for the service of the petitioner on the address available on record but neither the petitioner nor any Authorized Representative/ Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue his reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte*

award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having the knowledge of the present dispute and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st Day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 45 of 2022

Instituted on : 14-02-2022

Decided on : 01-06-2023

Mohit Kumar s/o Shri Jia Lal, r/o Village Chayal, P.O. Habban, Tehsil Rajgarh, District Sirmaur, H.P. . . Petitioner.

VERSUS

1. M/s Friends Associates, HQ # 105 Sector-18, Panchkula Haryana.
2. M/s Rainbow Enterprises, HQ Shimla H.P.
3. The Registrar University of Horticulture and Forestry, Nauni, District Solan, H.P. . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	: Nemo
For the Respondent No. 1	: Shri Prateek Kumar, Adv.
For the Respondent No. 2	: Shri Anirudh Singh, Adv.
For the Respondent No. 3	: Shri Umesh Sanoria, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 16.12.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Mohit Kumar s/o Shri Jia Lal, r/o Village Chayal, P.O. Habban, Tehsil Rajgarh, District Sirmaur, H.P. by the (1) M/s Friends Associates, HQ # 105 Sector-18, Panchkula Haryana (2) M/s Rainbow Enterprises, HQ Shimla H.P. (3) The Registrar University of Horticulture and Forestry, Nauni, District Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, to what relief including reinstatement in service, seniority, amount of back-wages, past service benefits and compensation the above aggrieved workman is entitled to from the above managements/employers?”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 14.01.2022 and thereafter *w.e.f.* 14.02.2022, this Tribunal had issued notice for the service of the petitioner upon which Shri R.K. Khidta, Advocate had appeared on behalf of the petitioner on 19.04.2022 and the case was listed for filing of statement of claim on 25.05.2022, 25.06.2022, 14.09.2022 and 01.10.2022 but no statement of claim has been filed on behalf of the petitioner and thereafter again notices were issued for the service of the petitioner on the address available on record but neither the petitioner nor any Authorized Representative/Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue his reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the

proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having the knowledge of the present dispute and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st Day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 13 of 2021

Instituted on : 19-01-2021

Decided on : 01-06-2023

Rakesh Kumar s/o Shri Prem Singh, c/o Raman Sharma # 207, Shivalik Nagar, Sector-II,
 Tehsil Baddi, District Solan, H.P. . . Petitioner.

VERSUS

The Managing Director M/s Smilax Healthcare Drug Co. 23 EPIP-1, Jharmajri, Tehsil
 Baddi, District Solan, H.P. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Shri Rajeev Sharma, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 05.01.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Rakesh Kumar s/o Shri Prem Singh, c/o Raman Sharma # 207, Shivalik Nagar, Sector-II, Tehsil Baddi, District Solan, H.P. w.e.f. 31.08.2020 by the Managing Director M/s Smilax Healthcare Drug Co. 23 EPIP-1, Jharmajri, Tehsil Baddi, District Solan, H.P. without serving any notice is legal and justified? If not, to what relief including reinstatement in service, seniority, amount of back-wages, past service benefits and compensation the above aggrieved workman is entitled to from the above management/employer?”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 07.01.2021 and thereafter *w.e.f.* 19.01.2021, this Tribunal is issuing notices for the service of the petitioner on the address available on record but neither the petitioner nor any Authorized Representative/ Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue his reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume

that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having the knowledge of the present dispute and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st Day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 173 of 2022

Instituted on : 20-05-2022

Decided on : 01-06-2023

Harish Kumar s/o Shri Harmesh Kumar, r/o Village and PO Kalwan, Tehsil Sri Anandpur Sahib, District Ropar Punjab .. Petitioner.

VERSUS

The Managing Director M/s Comed Chemical Ltd. Unit-III, Village Dassomajra, P.O. Bhud, Tehsil Baddi, District Solan, H.P. .. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Shri Ashwani Koundal, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 07.04.2022, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Harish Kumar s/o Shri Harmesh Kumar, r/o Village and P.O. Kalwan, Tehsil Sri Anandpur Sahib, District Ropar Punjab by the Managing Director M/s Comed Chemical Ltd. Unit-III, Village Dassomajra, P.O. Bhud, Tehsil Baddi, District Solan, H.P. w.e.f. 16.09.2021 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief including reinstatement in service, seniority, amount of back-wages, past service benefits and compensation the above aggrieved workman is entitled to from the above management/ employer?”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 18.05.2022 and thereafter *w.e.f.* 20.05.2022, this Tribunal is issuing notices for the service of the petitioner on the address available on record but neither the petitioner nor any Authorized Representative/ Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue his reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having the knowledge of the present dispute and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st Day of June, 2023.

Sd/-

(RAJESH TOMAR),

Presiding Judge,

Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 154 of 2022

Instituted on : 04-04-2022

Decided on : 01-06-2023

Hemant Singh s/o Shri Akbar Ali, r/o Village Surajpur, P.O. Puruwal, Tehsil Paonta Sahib, District Sirmaur, H.P. . .Petitioner.

VERSUS

The Occupier/Factory Manager M/s B.E Pharmaceuticals Pvt. Ltd., Nihalgarh, Paonta Sahib, District Sirmaur, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Shri Prateek Kumar, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 30.03.2022, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether Shri Hemant Singh s/o Shri Akbar Ali, r/o Village Surajpur, P.O. Puruwal, Tehsil Paonta Sahib, District Sirmaur, HP who was working as Assistant Manager at the time of termination of services, falls under the definition of “workman” under section 2 (s) of the Industrial Disputes Act, 1947? If yes, what relief Shri Hemant Singh is entitled to? And if not, what its effect.”

“Whether the termination of the worker Shri Hemant Singh s/o Shri Akbar Ali, r/o Village Surajpur, P.O. Puruwal, Tehsil Paonta Sahib, District Sirmaur, H. P. by the occupier/Factory Manager M/s B.E Pharmaceuticals Pvt. Ltd., Nihalgarh, Paonta Sahib, District Sirmaur, H.P. w.e.f. 03.07.2021 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not to what relief, service benefits and compensation the above aggrieved workman is entitled to from the above management/employer.”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 04.04.2022 and thereafter this Tribunal is issuing notices for the service of the petitioner on the address available on record but neither the petitioner nor any Authorized Representative/ Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue his reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:-

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having the knowledge of the present dispute and after

issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st Day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 178 of 2022

Instituted on : 26-05-2022

Decided on : 01-06-2023

Rumali w/o Shri Chandera Pal, r/o Village & P.O. Bargawan, District Bareilly (UP) . .Petitioner .

VERSUS

The Managing Director M/s Him Teknoforge Ltd. (Unit-IV), Plot No.30, HPSIDC, Ind. Area, Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Shri Sunny Chauhan, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 17.05.2022, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Smt. Rumali w/o Shri Chandera Pal, r/o Village & P.O. Bargawan, District Bareilly (UP) by the Managing Director M/s Him Teknoforge Ltd. (Unit-IV), Plot No. 30, HPSIDC, Ind. Area, Baddi, District Solan, HP w.e.f. 27.04.2021 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief including seniority, amount of back-wages, past service benefits and compensation the above aggrieved workman is entitled to from the above management/employer?”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 25.05.2022 and thereafter *w.e.f.* 26.05.2022, this Tribunal is issuing notices for the service of the petitioner on the address available on record but neither the petitioner nor any Authorized Representative/ Advocate had appeared on her behalf before this Court, which seems that at present the petitioner is not interested to pursue her reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor her Authorized Representative has put in appearance before this Tribunal despite having the knowledge of the present dispute and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the

petitioner herself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st Day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 155 of 2022

Instituted on : 04-04-2022

Decided on : 01-06-2023

Gurcharan Dass and 10 others C/o Shri Gurucharan Dass s/o Shri Tulshi Ram Village & PO Madhala, Tehsil Baddi, District Solan, H.P. .Petitioner.

VERSUS

The Factory Manager M/s Vaishnavi Kosmeticos Pvt. Ltd. Village Bhurawala, Tehsil Baddi, District Solan, H.P. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government vide notification dated 31.03.2022, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the demands raised by Shri Gurcharan Dass and 10 others C/o Shri Gurucharan Dass s/o Shri Tulshi Ram, Village & PO Madhala, Tehsil Baddi, District Solan, H.P. vide their demand notice dated 12.08.2021 (copy enclosed) before the management i.e the Factory Manager M/s Vaishnavi Kosmeticos Pvt. Ltd. Village Bhurawala, Tehsil Baddi, District Solan, H.P. is legal and justified? IF yes, to what

monetary and other consequential service benefits, the above mentioned workmen are entitled to from the above said employer/management?"

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 02.04.2022 and thereafter w.e.f. 04.04.2022, this Tribunal is issuing notices for the service of the petitioner on the address available on record upon which the petitioner appeared before this Court on 03.06.2022 and the case was listed for filing of claim petition but thereafter neither the petitioner nor any Authorized Representative/ Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue his reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974." Similarly, Rule 25 thereof which reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having the knowledge of the present dispute and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st Day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

ReferenceNumber : 160 of 2021

Instituted on : 03-09-2021

Decided on : 01-06-2023

Shakuntla w/o Shri Jasmat Singh, r/o VPO Kotla Mohar, Tehsil Dadahu, District Sirmaur,
 H.P. . .Petitioner.

VERSUS

The Occupier/Factory Manager M/s SBS Biotech, Village Rampur Jattan, P.O. Kala Amb,
 Tehsil Nahan, District Sirmaur, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Tek Chand, Advocate

For respondent : Ms. Kiran Thakur, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 03.08.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of services of Smt. Shakuntla w/o Shri Jasmat Singh, r/o VPO Kotla Mohar, Tehsil Dadahu, District Sirmaur, HP w.e.f. 09.11.2020 by the Employer/Management i.e. Occupier/Factory Manager M/s SBS Biotech, Village Rampur Jattan, P.O. Kala Amb, Tehsil Nahan, District Sirmaur, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back-wages, other consequential service benefits and compensation the above aggrieved workman is entitled to from the above stated employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed the statement of claim praying therein that this Hon'ble Court be pleased to answer the reference in favour of the workman holding this retrenchment/termination to be wholly improper and unjustified and to direct the respondent to re-engage the services of the petitioner as daily wager with the respondent at the same place and in the same capacity as she was working prior to disengagement w.e.f. 09.11.2020 and also direct the respondent to pay all the consequential benefits.

3. To the fore, Shri Usman Ali, HR Executive of respondent company has stated at bar that he has been duly authorized to make the statement before this Court *vide* authority letter (PX-1). He further stated that the respondent company is ready and willing to re-engage the petitioner at the same place and same capacity as she was working prior to her termination along-with seniority and continuity but without back-wages. The company has no objection in case the order for re-engagement is passed in favour of the petitioner. He has also placed on record copy of Aadhar Card (PX). To this effect his statement recorded separately and placed on record.

4. *Vide* separate statement Shri Tek Chand, Advocate for the petitioner has stated that the aforesaid statement of Shri Usman Ali, HR Executive is acceptable to him.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis- a -vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner. The respondent company is ready and willing to re-engage the services of the petitioner on the same place and capacity as she was working prior to her termination with seniority and continuity. Therefore, the industrial dispute raised from the side of the petitioners arising out of reference no. 160 of 2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled. The respondent company is directed to reengage the services of the petitioner in the same capacity and place as she was working prior to her termination with seniority and continuity. However, the petitioner is not entitled to any back-wages.** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e* copy of Aadhar Card (PX) and authority letter (PX-1), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 121 of 2019

Instituted on : 23-08-2019

Decided on : 01-06-2023

Mojamil Alam s/o Shri Manjoor Alam, r/o VPO Kala Amb, Tehsil Nahan, District Sirmaur,
H.P. . .Petitioner.

VERSUS

The Managing Director M/s Vimal Industries Khasra No. 153/1/2, Mauza Johron, Kala Amb, Tehsil Nahan, District Sirmaur, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Tajinder Singh, Advocate

For the Respondent : Shri Umesh Negi, Advocate

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 09.08.2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for legal adjudication:

“Whether termination of services of Shri Mojamil Alam s/o Shri Manjoor Alam, r/o VPO Kala Amb, Tehsil Nahan, District Sirmaur, HP by the Managing Director M/s Vimal Industries Khasra No. 153/1/2, Mauza Johron, Kala Amb, Tehsil Nahan District Sirmaur, H.P. w.e.f. 18.12.2018 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed the statement of claim.

3. Briefly stated, the case as pleaded from the side of the petitioner in his statement of claim is that he was appointed as a helper in the production unit of respondent on 13.11.2015 and unfortunately on 16.11.2015, he met with an accident while performing his duty on Recycle Machine which resulted in amputation of his four fingers rendering him helpless and disable for life time. The services of the petitioner were terminated without any notice, retrenchment compensation and that too without complying with the provisions of section 25-F of the Act, which amounts to unfair labour practice. It is further pleaded that the petitioner had completed more than 240 working days in a calendar year preceding his termination. In the footnote of the claim petition, the petitioner prayed for the following relief's:

“In view of the facts & circumstances enumerated hereinabove, it is most humbly and respectfully prayed that the termination of the petitioner may kindly be declared as

illegal and unjustified and the respondent may kindly be directed to reengage the petitioner from the date of his illegal termination i.e. 18.12.2018, with full back-wages, seniority and other consequential service benefits. Any other relief which this Hon'ble Court may deem fit and proper may also be awarded in favour of the petitioner in the interest of justice and equity."

4. The lis was resisted and contested by the respondent by filing reply wherein the fact relating to engagement of petitioner and his accident in the company has been admitted. It is submitted that after his accident the respondent continued to engage petitioner despite his disability and he was assigned the miscellaneous duty of helper. The petitioner was warned many time for his misconducts. It is denied that the services of the petitioner were terminated on 18.12.2018. The petitioner left the employment without intimation. The respondent prayed for the dismissal of the claim petition.

5. Rejoinder has not been filed.

6. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 20.04.2022:

1. Whether the termination of the petitioner w.e.f. 18.12.2018 by the respondent without complying the provisions of the Industrial Disputes Act is illegal and unjustified? If yes, what relief the petitioner is entitled to? ..OPP.
2. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
3. Relief.

7. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

8. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1	:	Redundant
Issue No.2	:	Redundant
Relief	:	Reference is answered in negative, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1 .

10. Most importantly, it is particular to mention here that after striking out of issues on elucidating the pleadings of the parties, the petitioner was asked to produce the entire evidence before the Court. The case was adjourned for petitioner's evidence on 30.05.2022 and subsequently adjourned for 02.06.2022, 13.07.2022, 13.09.2022, 18.11.2022, 19.12.2022 03.03.2023,

17.04.2023, 27.04.2023 and 23.05.2023. The perusal of case record would reveal that there are as many as Ten (10) opportunities in past one and half (1 ½) years have been afforded to the petitioner to adduce his evidence before the Court. It is a matter of great concern that despite number of opportunities granted to the petitioner for the one and half (1 ½) years, no evidence has been led from the side of the petitioner. Not only this, this Court *vide* orders dated 18.11.2022, 3.3.2022, 17.04.2022, 27.04.2023 and 23.05.2023 emphasis the parties that sufficient opportunities have already been afforded to the petitioner to lead his evidence by putting a letter of condition to the parties that one and half years have elapsed. Ld. Counsel for the petitioner was apprised of the fact that it be treated as last and final opportunity and no further opportunity shall be given and the case was adjourned for recording the evidence of the petitioner on 23.05.2023. This Court is constrained to draw inference that the petitioner is not interested in pursuing further by way of leading his evidence. The case is lingering upon for the fault of non than other but the petitioner himself as the parties were asked to face the trial by striking out the issues as is evident from the order dated 20.04.2022. At the cost of repetition after availing number of opportunities rising to ten (10) in number in past one and half (1 ½) years, the petitioner evidence is yet not produced. As such, I have left with no other alternate but to close the evidence of the petitioner by the order of the Court.

11. At this stage, Shri Umesh Negi, Advocate for the respondent stated at bar that he do not want to lead any evidence since the petitioner's evidence has been closed. To this effect his statement recorded separately.

12. As per the petitioner he has challenged his termination to be illegal but after availing Ten (10) opportunities in the past one hand half years, has failed to lead any evidence before this Court in support of his statement of claim. In the absence of any evidence on record, the petitioner has failed to prove issue no.1, hence, issue no.1 is answered against the petitioner and in favour of respondent.

ISSUES NO. 2 .

13. The onus to prove these issues were on the respondent. However, the respondent has not lead any evidence in support of these issues. Therefore, this issue is answered against the respondent.

RELIEF:

14. As a sequel to my above discussion, the claim filed by the petitioner is dismissed with the result, the reference sent by the appropriate government is answered in negative. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

15. The reference is answered in the aforesaid terms.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2023.

Sd/-

(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 132 of 2020

Instituted on : 21-07-2020

Decided on : 01-06-2023

Sunil Kumar s/o Shri Shruv Sen, r/o VPO Ranol, Tehsil Chirgaon, District Shimla, H.P.
. .Petitioner.

VERSUS

1. The Director M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IVth Floor Metri Arked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 30.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether dismissal of the service of Shri Sunil Kumar s/o Shri Shruv Sen, r/o VPO Ranol, Tehsil Chirgaon, District Shimla, H.P. by the management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. w.e.f. 16.09.2019 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents has vehemently stated at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved inter se the parties. The respondents have agreed to pay an amount of ₹ 50,000/- (Fifty Thousand only) as full and final settlement amount of the claim to the relief, all sort of, which has been claimed by the claimant in the prayer clause of the claim petitioner preferred before this Tribunal. The settlement amount shall be paid by the respondents to the petitioner on or before 10.06.2023.

4. Accordingly, Shri Yogesh Malik, General Manager Operations of the company has stated at bar that the industrial dispute arising out of the reference petition no. 132 of 2020 regarding the dismissal of the services of the petitioner by the respondent management w.e.f. 16.09.2019 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to **₹ 50,000/- (Fifty Thousand only)** towards lump sum compensation in lieu of retrenchment compensation, re-instatement, arrear of back wages, compensation and other benefits etc. As per settlement, the settlement amount shall be paid to the petitioner on or before 10.06.2023, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Sunil Kumar, the petitioner *vide* separate statement has stated that the statement of Shri Yogesh Malik has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement. The respondent company is ready and willing to pay an amount of Rs. 50,000/- as full and final settlement amount, which is acceptable to him. The full & final amount of **₹ 50,000/- (Fifty Thousand only)**, shall be payable on or before 10.06.2023, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition. It is apposite to mentioned that the statement made by the petitioner before this Court has been countersigned by the Ld. Counsel for the petitioner also.

6. Thus, keeping in view the attendant facts and circumstances of the case *vis- a -vis* perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of **₹50,000/- (Fifty Thousand only)** as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 132 of 2020 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹ 50,000/- (Fifty Thousand only)** as lump sum compensation to the petitioner on or before 10.06.2023. It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 10.06.2023, the same shall carry interest @ 9% per annum.

8. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties, which shall also form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced :
01-06-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 192 of 2020

Instituted on : 07-09-2020

Decided on : 01-06-2023

Rajwant Singh s/o Shri Inder Sain, r/o Village Maktot, P.O. Gaonsari, Tehsil Chirgaon, District Shimla, H.P. . .Petitioner.

VERSUS

1. The Director M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IV th Floor Metri Arked, 2-3-42/52, M.G. Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P. Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether dismissal of the service of Shri Rajwant Singh s/o Shri Inder Sain, r/o Village Maktot, P.O. Gaonsari, Tehsil Chirgaon, District Shimla, H.P by the management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. w.e.f. 16.09.2019 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents has vehemently stated at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved inter se the parties. The respondents have agreed to pay an amount of ₹ 50,000/- (Fifty Thousand only) as full and final settlement amount of the claim to the relief, all sort of, which has been claimed by the claimant in the prayer clause of the claim petitioner preferred before this Tribunal. The settlement amount shall be paid by the respondents to the petitioner on or before 10.06.2023.

4. Accordingly, Shri Yogesh Malik, General Manager Operations of the company has stated at bar that the industrial dispute arising out of the reference petition no. 192 of 2020 regarding the dismissal of the services of the petitioner by the respondent management w.e.f. 16.09.2019 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to **₹ 50,000/- (Fifty Thousand only)** towards lump sum compensation in lieu of retrenchment compensation, re-instatement, arrear of back wages, compensation and other benefits etc. As per settlement, the settlement amount shall be paid to the petitioner on or before 10.06.2023, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Rajwant Singh, the petitioner *vide* separate statement has stated that the statement of Shri Yogesh Malik has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement. The respondent company is ready and willing to pay an amount of Rs. 50,000/- as full and final settlement amount, which is acceptable to him. The full & final amount of ₹ 50,000/- (Fifty Thousand only), shall be payable on or before 10.06.2023, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition. It is apposite to mentioned that the statement made by the petitioner before this Court has been countersigned by the Ld. Counsel for the petitioner also.

6. Thus, keeping in view the attendant facts and circumstances of the case *vis- a -vis* perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹50,000/- (Fifty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 192 of 2020 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹ 50,000/- (Fifty Thousand only)** as lump sum compensation to the petitioner on or before 10.06.2023. It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 10.06.2023, the same shall carry interest @ 9% per annum.

8. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties, which shall also form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced :
01-06-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

ReferenceNumber : 196 of 2020

Instituted on : 14-09-2020

Decided on : 01-06-2023

Devinder Singh s/o Shri Sen Ram, r/o Village Gaonsari, P.O. and Tehsil Chirgaon, District Shimla, H.P. . *Petitioner.*

VERSUS

1. The Director M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IV th Floor MetriArked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether dismissal of the service of Shri Devinder Singh s/o Shri Sen Ram, r/o Village Gaonsari, P.O. and Tehsil Chirgaon, District Shimla, H.P. by the management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. w.e.f. 16.09.2019 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents has vehemently stated at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved inter se the parties. The respondents have agreed to pay an amount of ₹50,000/- (Fifty Thousand only) as full and final settlement amount of the claim to the relief, all sort of, which has been claimed by the claimant in the prayer clause of the claim petitioner preferred before this Tribunal. The settlement amount shall be paid by the respondents to the petitioner on or before 10.06.2023.

4. Accordingly, Shri Yogesh Malik, General Manager Operations of the company has stated at bar that the industrial dispute arising out of the reference petition no. 208 of 2020 regarding the dismissal of the services of the petitioner by the respondent management w.e.f. 16.09.2019 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to **₹50,000/- (Fifty Thousand only)** towards lump sum compensation in lieu of retrenchment compensation, re-instatement, arrear of back wages, compensation and other benefits etc. As per settlement, the settlement amount shall be paid to the petitioner on or before 10.06.2023, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Devinder Singh, the petitioner *vide* separate statement has stated that the statement of Shri Yogesh Malik has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement. The respondent company is ready and willing to pay an amount of Rs. 50,000/- as full and final settlement amount, which is acceptable to him. The full & final amount of ₹50,000/- (Fifty Thousand only), shall be payable on or before 10.06.2023, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition. It is apposite to mentioned that the statement made by the petitioner before this Court has been countersigned by the Ld. Counsel for the petitioner also.

6. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹50,000/- (Fifty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 196 of 2020 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹50,000/- (Fifty Thousand only)** as lump sum compensation to the petitioner on or before 10.06.2023. It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 10.06.2023, the same shall carry interest @ 9% per annum.

8. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties, which shall also form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced :
01-06-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 197 of 2020

Instituted on : 14.09.2020

Decided on : 01.06.2023

Pawan Kumar s/o Shri Munshi Ram, r/o Village Dhagoli, P.O. Kanthli, Tehsil Chirgaon, District Shimla, H.P. . .Petitioner.

VERSUS

1. The Director M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IV th Floor Metri Arked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether dismissal of the service of Shri Pawan Kumar s/o Shri Munshi Ram, r/o Village Dhagoli, P.O. Kanthli, Tehsil Chirgaon, District Shimla, H.P. by the management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. w.e.f. 16.09.2019 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents has vehemently stated at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved inter se the parties. The respondents have agreed to pay an amount of ₹50,000/- (Fifty Thousand only) as full and final settlement amount of the claim to the relief, all sort of, which has been claimed by the claimant in the prayer clause of the claim petitioner preferred before this Tribunal. The settlement amount shall be paid by the respondents to the petitioner on or before 10.06.2023.

4. Accordingly, Shri Yogesh Malik, General Manager Operations of the company has stated at bar that the industrial dispute arising out of the reference petition no. 197 of 2020 regarding the dismissal of the services of the petitioner by the respondent management w.e.f. 16.09.2019 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to **₹ 50,000/- (Fifty Thousand only)** towards lump sum compensation in lieu of retrenchment compensation, re-instatement, arrear of back wages, compensation and other benefits etc. As per settlement, the settlement amount shall be paid to the petitioner on or before 10.06.2023, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Pawan Kumar, the petitioner *vide* separate statement has stated that the statement of Shri Yogesh Malik has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement. The respondent company is ready and willing to pay an amount of Rs. 50,000/- as full and final settlement amount, which is acceptable to him. The full & final amount of ₹50,000/- (Fifty Thousand only), shall be payable on or before 10.06.2023, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition. It is apposite to mentioned that the statement made by the petitioner before this Court has been countersigned by the Ld. Counsel for the petitioner also.

6. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹50,000/- (Fifty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 197 of 2020 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹50,000/- (Fifty Thousand only)** as lump sum compensation to the petitioner on or before 10.06.2023. It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 10.06.2023, the same shall carry interest @ 9% per annum.

8. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties, which shall also form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced :
01-06-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 198 of 2020

Instituted on : 14-09-2020

Decided on : 01-06-2023

Glower Singh s/o Shri Amar Dutt, r/o VPO Gaonsari, Tehsil Chirgaon, District Shimla,
H.P. . .Petitioner.

VERSUS

1. The Director M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IV th Floor
MetriArked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II,
Gushali, Tehsil Chirgaon, District Shimla, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P. Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether dismissal of the service of Shri Glower Singh s/o Shri Amar Dutt, r/o VPO Gaonsari, Tehsil Chirgaon, District Shimla, H.P. by the management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. w.e.f. 16.09.2019 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents has vehemently stated at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved inter se the parties. The respondents have agreed to pay an amount of ₹ 50,000/- (Fifty Thousand only) as full and final settlement amount of the claim to the relief, all sort of, which has been claimed by the claimant in the prayer clause of the claim petitioner preferred before this Tribunal. The settlement amount shall be paid by the respondents to the petitioner on or before 10.06.2023.

4. Accordingly, Shri Yogesh Malik, General Manager Operations of the company has stated at bar that the industrial dispute arising out of the reference petition no. 198 of 2020 regarding the dismissal of the services of the petitioner by the respondent management w.e.f. 16.09.2019 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to **₹50,000/- (Fifty Thousand only)** towards lump sum compensation in lieu of retrenchment compensation, re-instatement, arrear of back wages, compensation and other benefits etc. As per settlement, the settlement amount shall be paid to the petitioner on or before 10.06.2023, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Glower Singh, the petitioner *vide* separate statement has stated that the statement of Shri Yogesh Malik has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement. The respondent company is ready and willing to pay an amount of Rs. 50,000/- as full and final settlement amount, which is acceptable to him. The full & final amount of ₹50,000/- (Fifty Thousand only), shall be payable on or before 10.06.2023, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition. It is apposite to mentioned that the statement made by the petitioner before this Court has been countersigned by the Ld. Counsel for the petitioner also.

6. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹50,000/- (Fifty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 198 of 2020 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹50,000/- (Fifty Thousand only)** as lump sum compensation to the petitioner on or before 10.06.2023. It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 10.06.2023, the same shall carry interest @ 9% per annum.

8. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties, which shall also form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 206 of 2020

Instituted on : 16-09-2020

Decided on : 01-06-2023

Rajwant Rai s/o Shri Puran Chand, r/o Village Chichwari, P.O. Rohal, Tehsil Chirgaon, District Shimla, H.P. . .Petitioner.

VERSUS

1. The Director M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IV th Floor Metri Arked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether dismissal of the service of Shri Rajwant Rai s/o Shri Puran Chand, r/o Village Chichwari, P.O. Rohal, Tehsil Chirgaon, District Shimla, H.P. by the management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. w.e.f. 16.09.2019 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents has vehemently stated at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved inter se the parties. The respondents have agreed to pay an amount of ₹ 50,000/- (Fifty Thousand only) as full and final settlement amount of the claim to the relief, all sort of, which has been claimed by the claimant in the prayer clause of the claim petitioner preferred before this Tribunal. The settlement amount shall be paid by the respondents to the petitioner on or before 10.06.2023.

4. Accordingly, Shri Yogesh Malik, General Manager Operations of the company has stated at bar that the industrial dispute arising out of the reference petition no. 208 of 2020 regarding the dismissal of the services of the petitioner by the respondent management w.e.f. 16.09.2019 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to **₹50,000/- (Fifty Thousand only)** towards lump sum compensation in lieu of retrenchment compensation, re-instatement, arrear of back wages, compensation and other benefits etc. As per settlement, the settlement amount shall be paid to the petitioner on or before 10.06.2023, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Rajwant Rai, the petitioner *vide* separate statement has stated that the statement of Shri Yogesh Malik has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement. The respondent company is ready and willing to pay an amount of Rs. 50,000/- as full and final settlement amount, which is acceptable to him. The full & final amount of ₹50,000/- (Fifty Thousand only), shall be payable on or before 10.06.2023, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition. It is apposite to mentioned that the statement made by the petitioner before this Court has been countersigned by the Ld. Counsel for the petitioner also.

6. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 50,000/- (Fifty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 206 of 2020 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹50,000/- (Fifty Thousand only)** as lump sum compensation to the petitioner on or before 10.06.2023. It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 10.06.2023, the same shall carry interest @ 9% per annum.

8. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties, which shall also form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 207 of 2020

Instituted on : 16-09-2020

Decided on : 01-06-2023

Mohinder Singh s/o Shri Barpu Ram, r/o Village Jabble, P.O. Gaonsari, Tehsil Chirgaon, District Shimla, H.P. . .Petitioner.

VERSUS

1. The Director M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IV th Floor MetriArked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P. Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether dismissal of the service of Shri Mohinder Singh s/o Shri Barpu Ram, r/o Village Jabble, P.O. Gaonsari, Tehsil Chirgaon, District Shimla, H.P. by the management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. w.e.f. 16.09.2019 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents has vehemently stated at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved interse the parties. The respondents have agreed to pay an amount of ₹ 50,000/- (Fifty Thousand only) as full and final settlement amount of the claim to the relief, all sort of, which has been claimed by the claimant in the prayer clause of the claim petitioner preferred before this Tribunal. The settlement amount shall be paid by the respondents to the petitioner on or before 10.06.2023.

4. Accordingly, Shri Yogesh Malik, General Manager Operations of the company has stated at bar that the industrial dispute arising out of the reference petition no. 207 of 2020 regarding the dismissal of the services of the petitioner by the respondent management w.e.f. 16.09.2019 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to **₹50,000/- (Fifty Thousand only)** towards lump sum compensation in lieu of retrenchment compensation, re-instatement, arrear of back wages, compensation and other benefits etc. As per settlement, the settlement amount shall be paid to the petitioner on or before 10.06.2023, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Mohinder Singh, the petitioner *vide* separate statement has stated that the statement of Shri Yogesh Malik has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement. The respondent company is ready and willing to pay an amount of Rs. 50,000/- as full and final settlement amount, which is acceptable to him. The full & final amount of ₹ 50,000/- (₹ Fifty Thousand only), shall be payable on or before 10.06.2023, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition. It is apposite to mentioned that the statement made by the petitioner before this Court has been countersigned by the Ld. Counsel for the petitioner also.

6. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 50,000/- (Fifty Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 207 of 2020 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹50,000/- (₹ Fifty Thousand only)** as lump sum compensation to the petitioner on or before 10.06.2023. It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 10.06.2023, the same shall carry interest @ 9% per annum.

8. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties, which shall also form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 208 of 2020

Instituted on : 16-09-2020

Decided on : 01-06-2023

Kalam Singh s/o Shri Chain Singh, r/o Village & P.O. Ranol, Tehsil Chirgaon, District Shimla, H.P. .*Petitioner.*

VERSUS

1. The Director M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IVth Floor MetriArked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P. Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether dismissal of the service of Shri Kalam Singh s/o Shri Chain Singh, r/o Village & P.O. Ranol, Tehsil Chirgaon, District Shimla, H.P. by the management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. w.e.f. 16.09.2019 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents has vehemently stated at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved interse the parties. The respondents have agreed to pay an amount of ₹ 50,000/- (Fifty Thousand only) as full and final settlement amount of the claim to the relief, all sort of, which has been claimed by the claimant in the prayer clause of the claim petitioner preferred before this Tribunal. The settlement amount shall be paid by the respondents to the petitioner on or before 10.06.2023.

4. Accordingly, Shri Yogesh Malik, General Manager Operations of the company has stated at bar that the industrial dispute arising out of the reference petition no. 208 of 2020 regarding the dismissal of the services of the petitioner by the respondent management *w.e.f.* 16.09.2019 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to **₹50,000/- (Fifty Thousand only)** towards lump sum compensation in lieu of retrenchment compensation, re-instatement, arrear of back wages, compensation and other benefits etc. As per settlement, the settlement amount shall be paid to the petitioner on or before 10.06.2023, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Kalam Singh, the petitioner *vide* separate statement has stated that the statement of Shri Yogesh Malik has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement. The respondent company is ready and willing to pay an amount of Rs. 50,000/- as full and final settlement amount, which is acceptable to him. The full & final amount of ₹ 50,000/- (Fifty Thousand only), shall be payable on or before 10.06.2023, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition. It is apposite to mentioned that the statement made by the petitioner before this Court has been countersigned by the Ld. Counsel for the petitioner also.

6. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of **₹50,000/- (Fifty Thousand only)** as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 208 of 2020 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹50,000/- (Fifty Thousand only)** as lump sum compensation to the petitioner on or before 10.06.2023. It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 10.06.2023, the same shall carry interest @ 9% per annum.

8. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties, which shall also form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

ReferenceNumber : 209 of 2020

Instituted on : 16-09-2020

Decided on : 01-06-2023

Gurdyal Singh s/o Shri Gian Chand, r/o Village Rawsi, P.O. Gushali, Tehsil Chirgaon, District Shimla, H.P. .*Petitioner.*

VERSUS

1. The Director M/s Gowthami Hydro Electric Co. Pvt. Ltd., No. 13, IV th Floor MetriArked, 2-3-42/52, M.G Road Sikandrabad.

2. The General Manager M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P. Chauhan, Advocate

For respondents : Shri Rahul Mahajan, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether dismissal of the service of Shri Gurdyal Singh s/o Shri Gian Chand, r/o Village Rawsi, P.O. Gushali, Tehsil Chirgaon, District Shimla, H.P. by the management of M/s Gowthami Hydro, Electric Co., Pvt. Ltd., Andra Stage-II, Gushali, Tehsil Chirgaon, District Shimla, H.P. w.e.f. 16.09.2019 without complying with the provision of the Industrial Dispute Act 1947, as alleged by the workman, is legal and justified? if not, what relief including re-instatement, seniority, amount of back wages, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Rahul Mahajan, Ld. Csl. for the respondents has vehemently stated at bar that after the reference has been received by this Court from the appropriate government, the matter stood amicably resolved inter se the parties. The respondents have agreed to pay an amount of ₹ 50,000/- (Fifty Thousand only) as full and final settlement amount of the claim to the relief, all sort of, which has been claimed by the claimant in the prayer clause of the claim petitioner preferred before this Tribunal. The settlement amount shall be paid by the respondents to the petitioner on or before 10.06.2023.

4. Accordingly, Shri Yogesh Malik, General Manager Operations of the company has stated at bar that the industrial dispute arising out of the reference petition no. 208 of 2020 regarding the dismissal of the services of the petitioner by the respondent management *w.e.f.* 16.09.2019 without complying with the provisions of the Industrial Disputes Act, 1947 has been amicably settled by way of amicable settlement. As per settlement the respondents have agreed to pay full & final settlement amount to the petitioner amounting to **₹ 50,000/- (Fifty Thousand only)** towards lump sum compensation in lieu of retrenchment compensation, re-instatement, arrear of back wages, compensation and other benefits etc. As per settlement, the settlement amount shall be paid to the petitioner on or before 10.06.2023, failing which he shall be liable to pay interest @ 9% per annum. Nothing survive in the present petition. To this effect this statement recorded separately and placed on record.

5. On the other hand, Shri Gurdyal Singh, the petitioner *vide* separate statement has stated that the statement of Shri Yogesh Malik has been read-over and explained to him which is duly accepted to him. The matter stood amicably resolved between the parties by way of amicable settlement. The respondent company is ready and willing to pay an amount of Rs. 50,000/- as full and final settlement amount, which is acceptable to him. The full & final amount of ₹ 50,000/- (Fifty Thousand only), shall be payable on or before 10.06.2023, failing which the respondents shall be liable to pay interest @ 9% per annum. Nothing survives in the present petition. It is apposite to mentioned that the statement made by the petitioner before this Court has been countersigned by the Ld. Counsel for the petitioner also.

6. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the entire case record, which manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of **₹50,000/- (Fifty Thousand only)** as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established on record that the parties have compromised the industrial dispute arising out of reference no. 209 of 2020 out of their own sweet will and free consent. The said compromise/settlement made between the parties is within the fore corner of the law.

7. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondents and agreed to pay a sum of ₹50,000/- (Fifty Thousand only)** as lump sum compensation to the petitioner on or before 10.06.2023. It is made clear that in case the respondents fails to make the payment of lump sum compensation to the petitioner on or before 10.06.2023, the same shall carry interest @ 9% per annum.

8. Consequently, the reference is answered accordingly and the award is passed as per the statements of both the parties, which shall also form an integral part and parcel of this award of mine. The reference is disposed off accordingly.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 113 of 2019

Instituted on : 11-07-2019

Decided on : 01-06-2023

Sanatan Dharam Sabha Workers Union Shimla through its President Shri Gaurav s/o Shri Babu Parcha, r/o house No. 194/84, Near Sikh Line, 309/1, Krishna Nagar Shimla-1 . . . Petitioner.

VERSUS

Employer/Manager Sanatan Dharam Sabha, Radha Krishan Mandir, Ganj Bazar Shimla-1,
H.P. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioners No. 1 to 4 : Shri K. S. Verma, Advocate

For petitioners No. 5 to 7 : None

For respondent : Shri Chandan Goel, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 04.07.2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether demand of the President (Shri Gaurav Correspondence Address house No. 194/84, Near Sikh Line, 309/1, Krishna Nagar Shimla-1 and General Secretary Shri Banti, Sanatan Dharam Sabha Workers Union Shimla before the Employer/Manager Sanatan Dharam Sabha, Radha Krishan Mandir, Ganj Bazar Shimla-1 for 25% hike in wages, is proper and justified? IF yes, what relief the aggrieved workmen are entitled to from the above management?”

“Whether the action of the Employer/Manager Sanatan Dharam Sabha, Radha Krishan Mandir, Ganj Bazar Shimla-1 to terminate the services of Shri Banti s/o Shri Mahipal Singh and 7 Ors. workers (as per list attached at Annexure A) w.e.f. 30.09.2018 during the course of conciliation proceedings in violation of provisions of Section 33 of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, amount of back-wages, past service benefits and compensation the above ex-workers are entitled to from the above employer?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Khushi Ram Verma, Advocate has appeared on behalf of the petitioners No. 1 to 4 whereas Shri Vikram Thakur, Advocate had appeared for respondent.

3. In pursuance to the reference notification, the petitioner has filed statement of claim praying therein that the impugned termination effected on the petitioner/workmen by the respondent may kindly be quashed and set aside and the petitioners may kindly be ordered to be reinstated with all consequential benefits, seniority and back-wages.

4. By filing reply, the respondent prayed for the dismissal of the claim petition.

5. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 22.12.2021, which reads as under:

1. Whether the demand raised by the petitioner union for 25% hike in wages, is proper and justified, as alleged? ..OPP.

2. Whether the termination of the services of Mahipal and seven other workers *w.e.f.* 30.09.2018 during the course of conciliation proceedings, in violation of provisions of section 33 of the Industrial Disputes Act, is illegal and unjustified? ..OPP.

3. If issues no.1 & 2 are proved in affirmative, than what sort of relief the petitioners are entitled to? ..OPP.

4. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.

5. Whether there was no industrial dispute pending between the parties, as alleged? ..OPR.

6. Relief

6. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:

Issue No.1 Decided accordingly

Issue No.2 Decided accordingly

Issue No. 3 Decided accordingly

Issue No.4 Decided accordingly

Issue No.5 Decided accordingly

Relief. Reference answered in affirmative being settled, as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 to 5.

9. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

10. In order to substantiate its case, the petitioner union had examined three PWs namely Sita Ram (PW-1), Pradeep Kiumar (PW-2) and Gaurav (PW-3). All the three witnesses have tendered into evidence their affidavits (PW-1/A), (PW-2/A) and (PW-3/A). On the other hand, the respondent has examined two RWs i.e S/Shri Vinod Agarwal (RW-1) and Jitesh Chauhan (RW-2), who have also tendered into evidence their affidavits (RW-1/A) and (RW-1/B).

11. At this stage, Shri Vinod Aggarwal, Secretary of respondent has stated that the industrial dispute raised on behalf of the petitioners stood amicably resolved by way of an amicable settlement. As per the settlement the respondent is ready and willing to make a sum of Rs. 40,000/- to the workers of union namely S/Shri Sita Ram, Gaurav, Pradeep and Bunty as full and final payment towards lump sum compensation. He further deposed that the full and final settlement amount has been paid to the aforesaid workers through cheques No. 000082, 000084, 000080, 000081 dated 08.05.2023. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him. To this effect his statement recorded separately and placed on record.

12. *Vide* separate statement the workers namely S/ Shri Sita Ram, Gaurav, Pradeep and Bunty have stated that the industrial dispute raised on behalf of the workers union, which was registered as Reference no. 113 of 2019, stood amicably resolved and settled between the parties as the respondent is ready and willing pay an amount of ₹ 40,000/- each to S/Shri Sita Ram, Gaurav, Pradeep and Bunty, which they have received through cheques. Nothing survives in the present petition. The above said statement was read over and explained to them which is duly accepted by them.

13. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner union stood amicably resolved and finally compromised by the petitioners **S/Shri Sita Ram, Gaurav, Pradeep and Bunty as the respondent has paid a sum of ₹ 40,000/- (Forty Thousand) to each worker through cheques no. 000082, 000084, 000080, 000081** dated 08.05.2023 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioners arising out of reference no. 113 of 2019, stood amicably settled between the parties.

14. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner union stood amicably settled to which S/Shri Sita Ram, Gaurav, Pradeep and Bunty as the respondent has paid a sum of ₹ 40,000/- (Forty Thousand) to each worker through cheques no. 000082, 000084, 000080, 000081** dated 08.05.2023. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e copy of cheques (PA), (PB), (PC), (PD), and copies of Aadhar Cards (PE), (PF), (PG), (PH) shall form the integral part and parcel of this award.

15. *Vide* separate statement Shri Khushi Ram Verma, Advocate for the petitioner union has stated that the petitioner no. 5 to 7 have not filed any claim petition as they do not want to

proceed further with the present reference petition. To this effect his statement recorded separately and placed on record.

16. Since, the petitioner no. 5 to 7 i.e Rajesh Kumar s/o late Shri Sohan Lal, Harpreet Singh s/o Shri Amarjeet Singh and Ricky Kumar s/o Shri Mamchand Kumar, have failed to file any statement of claim and also filed to appear before this Court, hence, the reference received on their behalf is ordered to be answered in negative. All the issues are decided accordingly.

17. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	29 of 2023
Instituted on	:	01-03-2023
Decided on	:	01-06-2023

Sushil Kumar s/o Shri Pyare Lal, r/o Village Chaboh, P.O. Awah Devi, Tehsil Bhoranj,
District Hamirpur, H.P. . Petitioner.

VERSUS

The Factory Manager/Occupier M/s ION Healthcare Pvt. Ltd., Village Juddikalan,
Barotiwala Road, Tehsil Nalagarh, District Solan, H.P. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner	:	In person
For respondent	:	Shri Prantap Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 03.01.2023, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of services of Shri Sushil Kumar s/o Shri Pyare Lal, r/o Village Chaboh, P.O. Awah Devi, Tehsil Bhoranj, District Hamirpur, H.P. by the Occupier M/s ION Healthcare Pvt. Ltd., Village Juddikalan, Barotiwala Road, Tehsil Nalagarh, District Solan, H.P. w.e.f. 01.01.2022 without complying with the provisions

of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief including reinstatement of service, past service benefits, leave encashment, over time benefits and compensation the above aggrieved workman is entitled to from the above stated employer/management?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has appeared in person whereas Shri Prantap Sharma, Advocate has appeared on behalf of the respondent.

3. To the fore, Ms. Preeta, HR Executive of respondent company has stated at bar that the matter has been finally settled between the parties. She has placed on record the copy of application (PA), settlement under section 18(1) of the Act (PB), receipt (PC), application (PD), resignation (PE), Statement of full & final settlement (PF), copy of Aadhar Card (PG) and copy of cheque no. 421351 dated 24.04.2023 Mark PX. Nothing survive in the present industrial dispute, hence, the industrial dispute received from the appropriate government may kindly be answered accordingly. To this effect her statement recorded separately and placed on record.

4. *Vide* separate statement Shri Sushil Kumar, petitioner has stated that the industrial dispute raised by him to which the reference has been received from the appropriate government has been fully & finally settled between the parties. He has admitted all the documents as aforesaid placed on record by the respondent *i.e* copy of application (PA), settlement under section 18(1) of the Act (PB), receipt (PC), application (PD), resignation (PE), Statement of full & final settlement (PF), copy of Aadhar Card (PG) and copy of cheque no. 421351 dated 24.04.2023 Mark PX. He has also placed on record copy of Aadhar Card Mark PY. Nothing survive in the present industrial dispute, hence, the industrial dispute received from the appropriate government may kindly be answered accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner in terms of settlement (PB). Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 29 of 2023, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement (PB), therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled.** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e* copy of application (PA), settlement under section 18(1) of the Act (PB), receipt (PC), application (PD), resignation (PE), Statement of full & final settlement (PF), copy of Aadhar Card (PG), copy of cheque no. 421351 dated 24.04.2023 Mark PX and copy of Aadhar card Mark PY, which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 46 of 2023

Instituted on : 02-03-2023

Decided on : 01-06-2023

Vipul Kumar s/o Shri Lal Chand, r/o Village Samlaina, P.O. Bhavarna, Tehsil Palampur, District Kangra, H.P. . .Petitioner.

VERSUS

The Factory Manager/Occupier M/s ION Healthcare Pvt. Ltd., Village Juddikalan, Barotiwala Road, Tehsil Nalagarh, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : In person

For respondent : Shri Prantap Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 01.02.2023, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of services of Shri Vipul Kumar s/o Shri Lal Chand, r/o Village Samlaina, P.O. Bhavarna, Tehsil Palampur, District Kangra, H.P. by the Occupier M/s ION Health care Pvt. Ltd., Village Juddikalan, Barotiwala Road, Tehsil Nalagarh, District Solan, H.P. w.e.f. 01.01.2022 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief including reinstatement of service, past service benefits, leave encashment, over time benefits and compensation the above aggrieved workman is entitled to from the above stated employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has appeared in person whereas Shri Prantap Sharma, Advocate has appeared on behalf of the respondent.

3. To the fore, Ms. Preeta, HR Executive of respondent company has stated at bar that the matter has been finally settled between the parties. She has placed on record the copy of application (PA), settlement under section 18(1) of the Act (PB), receipt (PC), application (PD), resignation (PE), Statement of full & final settlement (PF), identity card (PG), copy of Aadhar Card (PH) and copy of cheque no. 421373 dated 28.04.2023 Mark PX-1. Nothing survive in the present industrial dispute, hence, the industrial dispute received from the appropriate government may kindly be answered accordingly. To this effect her statement recorded separately and placed on record.

4. *Vide* separate statement Shri Vipul Kumar, petitioner has stated that the industrial dispute raised by him to which the reference has been received from the appropriate government

has been fully & finally settled between the parties. He has admitted all the documents as aforesaid placed on record by the respondent *i.e.* copy of application (PA), settlement under section 18(1) of the Act (PB), receipt (PC), application (PD), resignation (PE), Statement of full & final settlement (PF), identity card (PG), copy of Aadhar Card (PH) and copy of cheque no. 421373 dated 28.04.2023 Mark PX-1. He has also placed on record copy of Aadhar Card Mark PX-2. Nothing survive in the present industrial dispute, hence, the industrial dispute received from the appropriate government may kindly be answered accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner in terms of settlement (PB). Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 46 of 2023, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement (PB), therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled.** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e.* copy of application (PA), settlement under section 18(1) of the Act (PB), receipt (PC), application (PD), resignation (PE), Statement of full & final settlement (PF), identity card (PG), copy of Aadhar Card (PH), copy of cheque no. 421373 dated 28.04.2023 Mark PX-1 and copy of Aadhar card Mark PX-2, which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number	:	48 of 2023
Instituted on	:	02-03-2023
Decided on	:	01-06-2023

Humesh Kumar s/o Shri Rajesh Kumar, r/o Village Jyalang, PO Kharhatti Jyalang, Tehsil Arki, District Solan, H.P. . .Petitioner.

VERSUS

The Factory Manager/Occupier M/s ION Healthcare Pvt. Ltd., Village Juddikalan, Barotiwala Road, Tehsil Nalagarh, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : In person

For respondent : Shri Prantap Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 06.02.2023, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of services of Shri Humesh Kumar s/o Shri Rajesh Kumar, r/o Village Jyalang, P.O. Kharhatti Jyalang, Tehsil Arki, District Solan, H.P. by the Occupier M/s ION Healthcare Pvt. Ltd., Village Juddikalan, Barotiwala Road, Tehsil Nalagarh, District Solan, H.P. w.e.f. 01.01.2022 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief including reinstatement of service, past service benefits, leave encashment, over time benefits and compensation the above aggrieved workman is entitled to from the above stated employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has appeared in person whereas Shri Prantap Sharma, Advocate has appeared on behalf of the respondent.

3. To the fore, Ms. Preeta, HR Executive of respondent company has stated at bar that the matter has been finally settled between the parties. She has placed on record the copy of application (PA), settlement under section 18(1) of the Act (PB), receipt (PC), application (PD), resignation (PE), Statement of full & final settlement (PF), copy of Aadhar Card (PG) and copy of cheque no. 421350 dated 24.04.2023 Mark PX-1. Nothing survive in the present industrial dispute, hence, the industrial dispute received from the appropriate government may kindly be answered accordingly. To this effect her statement recorded separately and placed on record.

4. *Vide* separate statement Shri Humesh Kumar, petitioner has stated that the industrial dispute raised by him to which the reference has been received from the appropriate government has been fully & finally settled between the parties. He has admitted all the documents as aforesaid placed on record by the respondent *i.e* copy of application (PA), settlement under section 18(1) of the Act (PB), receipt (PC), application (PD), resignation (PE), Statement of full & final settlement (PF), copy of Aadhar Card (PG) and copy of cheque no. 421350 dated 24.04.2023 Mark PX-1. He has also placed on record copy of Aadhar Card Mark PX-2. Nothing survive in the present industrial dispute, hence, the industrial dispute received from the appropriate government may kindly be answered accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner in terms of settlement (PB). Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 48 of 2023, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement (PB), therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner is understood amicably settled.** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record *i.e.* copy of application (PA), settlement under section 18(1) of the Act (PB), receipt (PC), application (PD), resignation (PE), Statement of full & final settlement (PF), copy of Aadhar Card (PG), copy of cheque no. 421350 dated 24.04.2023 Mark PX-1 and copy of Aadhar card Mark PX-2, which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 168 of 2020

Instituted on : 18-08-2020

Decided on : 01-06-2023

Meera Garg w/o Shri Devi Ram, c/o Thakur Niwas above ZSI Sapron, District solan, H.P.
. .Petitioner.

VERSUS

1. Arindam Bandhopadhy, General Secretary, International Institute of Invincible Rhythms, Vivek Niwas Chhakrali Churat Nallah Road, Near Balaji Motors Bhatta Kufer, Shimla.

2. Mayuri Sen, Administrative Director, Arindam Bandhopadhy, General Secretary, International Institute of Invincible Rhythms, Vivek Niwas Chhakrali Churat Nallah Road, Near Balaji Motors Bhatta Kufer, Shimla.
. .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner : Ms. Reena Thakur, Advocate

For the respondents : Proceeded ex-parte

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 04.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether International Institute of Invincible Rhythms, Vivek Niwas, Chhakrali, Churat Nallah Road, Near Balaji Motors, Bhatta Kufer, Shimla 171006 is an "Industry" as per section 2(j) of the Industrial Disputes Act, 1947? If yes, whether termination of the services of Smt. Meera Garag w/o Sh. Devi Ram Garag, c/o Thakur Niwas above ZSI Sapron, Distt. Solan, (H.P.) by (i) Sh. Arindam Bandhopadhyaya, General Secretary, International Institute of Invincible Rhythms, Vivek Niwas, Chhakrali, Churat Nallah Road, Near Balaji Motors, Bhatta Kufer, Shimla 171006. (ii) Ms. Mayuri Sen, Administrative Director, International Institute of Invincible Rhythms, Vivek Niwas, Chhakrali, Churat Nallah Road, Near Balaji Motors, Bhatta Kufer, Shimla-171006 w.e.f. 17.9.2019, without complying with the provisions of the Industrial Disputes Act 1947, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above management?”

2. Material facts necessary for the disposal of the present reference petition as emerges from the statement of claim are thus that the services of the petitioner had been engaged by respondent no.1, as Business Development Manager, on monthly salary of ₹ 10,000/- *vide* appointment letter dated 08.10.2018. The petitioner had performed her duties, to the satisfaction of respondents, as a Zonal Business Development Manager in whole Districts of Shimla and Solan. The respondent had also promised to pay monthly allowance of TA, DA and 3% incentives on the business generated in the month. The petitioner started to contact the concerned farmers of the whole area and they were invited to the office of the concerned Panchayat to motivate them and to impart organic farming trainings and make them aware about the benefits of the organic farming. The petitioner rendered her duties to the satisfaction of respondent and earned handsome profits to the company, hence, the respondents promoted the petitioner as Zonal Development Manager and revised her salary from Rs. 10,000/- to Rs. 20,000/- per month. It is further averred that the petitioner continuously rendered her duties *w.e.f.* 08.10.2018 to 07.08.2019, without any break in the company but unfortunately *w.e.f.* 10.08.2019 to 23.08.2019, the petitioner remained hospitalized at IGMC Shimla and thereafter *w.e.f.* 24.8.2019 to 16.9.2019, she had been advised to take complete rest. After having felt healthy informed the respondent no.1, telephonically as well as on whats app. About the willingness to join her duties on 16.9.2019 but the respondents at one pretext or the other had been dillydallying in taking the joining of the petitioner, hence, the petitioner personally visited the office of respondents on 17.09.2023 for giving her joining but her joining was not taken such act of the respondents amounts to wrong, illegal and malafide.

3. The petitioner has been given salary only till 24.02.2019 and thereafter she had not been given any salary till date, hence the respondents are liable to pay outstanding salary to the petitioner @ ₹ 10,000/- per month *w.e.f.* 25.02.2019 to 24.04.2019 and thereafter @ ₹ 20,000/- per month *w.e.f.* 25.04.2019 to till date along-with TA, DA. The respondents are also liable to pay ₹ 14,000/-, *i.e.* ₹ 10,000/- paid by the petitioner to Brahmi Compost and ₹ 4,000/- has been paid to respondent no.1. The respondents are liable to pay rent for the month of August, 2019 amounting to ₹ 5,000/-. It is averred that when in the month of September, 2019, the petitioner earnestly requested the respondent to take her joining and to release the outstanding wages but of no avail. The services of the petitioner have been terminated without following the provisions of the Act as neither any notice has been issued to her before terminating her services nor she was paid retrenchment compensation. Even, the respondents have not followed the provisions of sections 25-G and 25-H of the Act as her juniors are still working with the respondents.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"It is therefore, most humbly prayed that the petition of the petitioner may kindly be allowed and the respondents may kindly be directed to restore the services of the petitioner and she may be re-engaged in the company of respondents and take her joining as a zonal Development manager in the company /organization of respondents and also release outstanding monthly wages of Rs. 10,000/- per month w.e.f. 25.2.2019 to 24.4.2019 and thereafter @ Rs. 20,000/-w.e. f. 25.4.2019 to till date along with TA, DA Bills and also release the other charges of Rs. 14,000/- and Rs. 5000/- + 500/-and also pay the outstanding monthly rent of Rs. 5000/- per month w.e.f. 1.9.2019 to till date with interest @ of 18% per annum to the petitioner and also pay compensation under section 25- F of Industrial Disputes Act 1947 which is necessary in the ends of justice and fair play.

Any other relief which this Hon'ble Court may feel fit and proper be also awarded in favour of the petitioner/claimant in the larger interest of justice and equity."

5. Before, I proceed further, it is important to mention here that the respondents were duly served, as per law but they have failed to appeared before this Court, hence, proceeded against ex-parte, as is evident from zimini order dated 07.07.2022.

6. No rejoinder has been filed.

7. On elucidating the pleading of statement of claim, the following points arises for its final determination, which is as under:

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 17.09.2019, is vioaltive of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to?

. .OPP.

2. Relief

8. The petitioner adduced oral as well as documentary evidence in support of her statement of claim.

9. I have heard the learned Counsel for the petitioner and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid points are as under:

Issue no.1	Yes
Relief	Reference is answered in affirmative awarding ₹ 1,25,000/- as lump sum compensation to the petitioner.

REASONS FOR FINDINGS

Issue No.1.

11. Henceforth, the petitioner was asked to adduce oral as well as documentary evidence in support of her statement of claim.

12. I have heard the learned Counsel for the petitioner and have also gone through the record of the case carefully.

13. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made in the claim petition. The petitioner also relied upon her appointment letter Mark PX-1 to Mark PX-3, demand notice Mark PX-4 and AD Mark PX-5.

14. Shri Gopal Sharma has also appeared into the witness dock as (PW-2) and tendered into evidence his sworn-in affidavit (PW-2/A), wherein he has stated that he was appointed as area Manager in the year 2018 along-with the petitioner by the respondents and he used to perform the same duty as that of petitioner. In his affidavit he has also supported the entire version of petitioner.

15. I have given my best anxious considerable thought to the submissions of the Learned Counsel for the petitioner and have also scrutinized the entire case record with minute care, caution and circumspection.

16. Thus, from a careful examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as Business Development Manager by the respondents vide appointment letter Mark PX-1 and her salary was fixed at Rs. 10,000/- per month. It is also clear that the petitioner had worked with the respondent *w.e.f.* 08.10.2018 till 17.09.2019, on which date her services were orally terminated by the respondents without issuing any notice and paying retrenchment compensation. It is also proved on record that the petitioner had worked with the respondents continuously and had completed more than 240 working days in preceding twelve calendar months prior to her oral termination. Since, the respondents have failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the respondent while terminating the services of the petitioner is to comply with the mandatory requirement of the law.

17. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and non-existent in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggest that the respondent has duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

18. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case.... "*

19. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of her retrenchment, her services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent Hotel did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

20. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

21. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated. In the case in hand the termination of the services of the petitioner is found to be illegal in view of the provisions of the Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar**

Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnsthana, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.

22. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, and also keeping in view the fact that the entire evidence adduced from the side of the petitioner, both ocular and documentary, had gone unrebutted and unchallenged, on record, before this Court/Tribunal, therefore, the petitioner is held entitled for a lump sum compensation amount of Rs. 1,25,000/- (₹ One Lakhs Twenty Five Thousand Only) as lump sum compensation to the petitioner. The point no.1 is decided accordingly.

RELIEF

23. As a sequel to my above discussion and findings on point no.1, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is awarded lump sum compensation of **Rs. 1,25,000/- (₹ One Lakhs Twenty Five Thousand Only), to be paid by the respondent society within three months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all her legal dues i.e gratuity, leave encashment, EPF, ESI etc., if any, in accordance with law.** The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number	:	112 of 2018
Instituted on	:	04-06-2018
Decided on	:	01-06-2023

The President and General Secretary, Carlsberg Workers Union, Registration No. 1179, Village Tokiyon, PO Sainwala, Tehsil Paonta Sahib, District Sirmaur, H.P. . . Petitioner.

VERSUS

The Managing Director M/s Carlsberg India Pvt. Ltd. Village Tokiyon, P.O. Sainwala, Tehsil Paonta Sahib, District Sirmaur, H.P. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, AR

For respondent : Shri Vivek Kaushal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 24.03.2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether demand raised by the President and General Secretary, Carlsberg Workers Union, Registration No. 1179, Village Tokiyon, PO Sainwala, Tehsil Paonta Sahib, District Sirmaur, HP vide demand notice dated 04.06.2017 (copy enclosed) before the Managing Director M/s Carlsberg India Pvt. Ltd. Village Tokiyon, P.O. Sainwala, Tehsil Paonta Sahib, District Sirmaur, H.P. for fulfilling are legal and justified? If yes, what relief in terms of above demand notice the concerned workmen are entitled to from the above management?”

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the workmen working in the respondent company are the employees of principal employer. Whereas, many workers are shown on the rolls of so called name lender contractor despite they are deployed for perennial nature of work i.e manufacturing process. These workmen are like regular workmen having been working in shifts as machine operators and lift operators. The workmen directly employed are paid ₹ 22000/- to ₹ 25000/- per month as compared to workmen shown on the name of so called name lender are paid ₹ 6300/- to 10,000/- per month. However, the nature of work, working hours and working conditions remain the same. The supervision over the work done by the workmen is carried out by the supervisor of the company and the so called name lender contractor has no role in supervision of work. The licence was provided to engage the contract labour for certain non-perennial nature of work. The legitimate rights of the petitioner/workmen were deprived under various labour law legislations and on the principles of “**Equal pay for equal work**”. The workmen working in the manufacturing process and producing the goods for sale are shown illegally on the rolls of name lender contractor even after rendering the services for more than five to ten years and their monthly wages are much lesser than that of the directly employed workmen though both are doing the similar work. The petitioner workmen were paid annual increment, bonus etc. @ 8.33 % whereas similarly situated workmen of the company are paid bonus @ 20% per annum. The workers of the petitioner are not granted uniforms, loans, LTA and leave etc. as available to the directly employed workmen of the company despite the fact that the workers of petitioner are also carrying the job of perennial nature. Along-with the reference, the demand charter as per the requirement of section 2-k of the Act raised by the petitioner union by raising as many as thirteen demands have also been annexed.

3. The following prayer clause has been appended in the footnote of the claim petition.

“It is, therefore, prayed that the name of workmen who are the members of the petitioner union be declared permanent workmen of the Respondent company and further all service benefits may be granted at par with the similarly situated workmen of the principal employer/respondent company with retrospective effect from the date of demand notice of the workmen union of dated 4.6.2017 and with costs throughout.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections of maintainability, no cause of action, the issue of perennial nature of contract cannot be raised, the plea of equal pay for equal work is not maintainable, estoppel and demand notice can be raised between employee and employer or in between employer or workmen, were also raised.

5. On merits, it is submitted that the present claim petition is not competent as the petitioner union is not formed by the workmen working with the respondent company. The petitioner union has got no right or authority to file the present claim petition. It is denied that the petitioner workmen are working as regular workmen in the capacity of machine operators/lift operators and for so many years. It is further denied that the activity of awarding contract to third party contractors attracts the provisions of unfair labour practice. It is further denied that the work carried out by the contract labour is beyond the scope of Contract Labour (Regulation and Abolition) Act, 1970 or the licence issued has been misused. It is submitted that the contractors are carrying out their independent obligation without any involvement of respondent company in execution of contractual assignment. Being principal employer, the respondent company has been complying with various obligations endorsed upon its establishment. It is denied that the petitioner/workmen are involved in a perennial nature of work i.e manufacturing process of the company. It is denied that the respondent company has violated the provisions of the Act and by engaging the contract labourer committed unfair labour practice. The contractual labour is only performing unskilled nature of work. It is denied that the respondent assessed the work and conduct of the contract labourer. It is further denied that the rights of the petitioner have been breached by respondent or that the principles of equity and justice have been infringed. It is submitted that the claim filed by the petitioner is false and result of misrepresentation. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed and the reference sent by the appropriate government may kindly be answered in favour of the respondent.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 01.06.2019, as under:

1. Whether the demand raised by the petitioner union vide demand notice dated 4th June, 2017 are legal and justified? If so its effect thereto? . .OPP.
2. Whether there is no relationship of a master and servant between the respondent and the petitioner as alleged? If so, its effect thereto? . .OPR .
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1

Decided accordingly

Issue no. 2	No
Relief	Reference is answered in negative as per operative part of award. However, the petitioner union is at liberty to espouse their cause/demands before the Labour Commissioner under the Contract Labour (Abolition and Regulation) Rules, 1974.

REASONS FOR FINDINGS

Issues No.1 & 3.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their final determination and adjudication.

12. At the very inception, the case set out by the petitioner/workmen namely M/s Carlsberg Workers Union to have the contractual labourer and claimed all the service benefits at par with the similar situated persons, engaged by the principal employer *i.e.* the respondent company. The petitioner union also solicits the financial benefits *i.e.* annul increment, bonus at the same rate to the similar situated workers being paid by the respondent company engaged directly by them. The petitioner union also claimed the same pay and perks as are being paid to the regular workmen or employed directly by the respondent company. Strangely enough, apart from financial benefits and regularization there are miscellaneous demands such as the sanctioning of leave, over time, uniform, shoes, washing allowance, advance etc., so raised are also part and parcel of the demand charter which are also sent by the appropriate government along-with the reference. None the less, the petitioner union has also placed on record the demand charter along-with the statement of claim.

13. Moreso, it is also the case of the petitioner union that near about ninety workmen, whose names appears and shown on the rolls of the name lender contractor who are being deprived from the service benefits to be granted at par with the directly employed workmen of the respondent company. It is pertinent to mention here that the petitioner union did not care to provide the list of these ninety workmen, who are stated to be on the rolls of the contractor or the workmen, who are directly appointed by the respondent company. It is submitted that all the benefits given to the directly engaged employees and not providing the benefits to the similar situated workers is mainly to deprive these workmen from the benefits with their counter parts *i.e.* directly employed workmen at par who are availing the said benefits.

14. In order to substantiate their case, the petitioner union examined Shri Mohan Lal as (PW-1), who tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence settlement (PW-1/B), letter dated 4.6.2017 Mark PA, labour attendance sheet Mark PC-1 to Mark PC-3, off roll contractor Mark PD, duty roster Mark PE and list of workmen Mark PF.

15. In the cross-examination he admitted that the copy of resolution authorizing him to appear as witness has not been placed on record. He admitted that the record annexed with the affidavit does not bear the signatures of the members of the union. He admitted that in the settlement dated 09.03.2010, the contractors namely Satish, Dalip and Jaswant were also party. He further admitted that the settlements also took place between the parties in the year 2014-15. He also admitted that all the three settlements were signed after admitting its contents to be true and correct. He admitted that as per the settlements in the years 2014 and 2015, they admitted that the work was inspected, maintained and managed by the contractors as they were on contractual

employment. He admitted that no complaint was filed before the Labour Officer that the supervisor from the company used to inspect and manage their work. He further admitted that presently they are working with the company through contractor Satish Kumar. He feigned ignorance that the salary, EPF, ESI etc., were paid to them by the contractor. He admitted that the workers of the company formed their own union. He further admitted that he is not the member of the union formed by the employees of the company. He also admitted that no complaint was filed for equal pay for equal work under the Contract Labour (Regulation and Abolition) Act, before competent authority. He admitted that no complaint was filed before the Labour Officer regarding the perennial nature of work conducted in the factory premises. He admitted that nature of duties assigned to the contract labour and the workers/employees of the company has not been deciphered in the claim petition, demand notice and the affidavit tendered in to evidence. He denied that the contract labour has not been performing any similar activity as performed by the direct employees. He admitted to have not seen the balance sheet of the company.

16. In order to counter, the respondent has examined Shri Vivek Negi, Labour Inspector, Head Quarter Office of Labour Commissioner Shimla as (RW-1), who has tendered in evidence application for registration of Trade Union (RW-1/A) along-with registration form (RW-1/B), Rule (RW-1/C), copy of resolution (RW-1/D), declaration along-with list of workers (RW-1/E) and (RW-1/F). In cross-examination he feigned ignorance that at the time of registration of union the verification of each and every employee was done by the Registrar. Feigned ignorance that the registration would be effected after the verification.

17. Shri Kamal Dev, Senior Assistant from the office of Labour Officer, Sirmaur has appeared into the witness box as (RW-2), who has also tendered in evidence copy of registration certificate (RW-2/A) as amended from time to time. In cross-examination, he admitted that the registration certificate was not issued by him. He feigned ignorance that the registration certificate is applicable on which worker. He feigned ignorance that the labourers on contract basis can be hired for loading- unloading purpose only.

18. Plant Manager of the respondent company Shri Anand Kumar Shrivastava has appeared into the witness doc as (RW-3) and tendered into evidence his sworn-in affidavit (RW-3/A), wherein he has reiterated almost all the averments as made in the reply filed on behalf of respondent. He also tendered into evidence settlement dated 13.07.2019.

19. In cross-examination, he admitted that adult worker register has been maintained by the respondent. The name of 53 workers were included in the said register. The company was taken over by the Carlsberg in 2010. He admitted that the settlement was arrived at by the HR of the company. He also stated that it was signed by the contractor. He admitted that the direct recruitments were made under the Rules. He denied that most of the workers are qualified and machine operators. Volunteered that they are engaged for loading, unloading, gardening work only. He feigned ignorance that under Government Policy, the workman is to be regularized in five years. He admitted that the union is Carlsberg workers Union. He denied that the minutes of the meeting were not provided on the rule. He also denied that the workers are involved in manufacturing process. He denied that the work is of permanent nature. He denied that contractor was not present in the factory. Volunteered that the contractor himself supervises the workers. He denied that the company had obtained the licence in the name of contractor. He denied that overall supervision and control is of the company. He denied that the workers were engaged by the company itself. He denied that the workers were not engaged through contractor. He admitted that the licence of the contractor was not placed on record. He denied that the petitioner false under the definition of workman. He also denied that the licence of Satish Kumar, Dalip Singh and Jaswant was expired on 30.04.2021. The contract workers are working in the shifts. He denied that the documents produced by the company are false.

20. Shri J.C. Bhardwaj, AR for the petitioner has contended with vehemence that the workers of petitioner union are wrongly shown on the rolls of the name lender contractor whereas their involvement in the perennial nature of work depicts that the petitioner are the employees of the respondent company for all intents and purposes. The employees recruited by the company are paid wages and remuneration on higher side as compared to similar situated workmen. It is submitted that the petitioners are working under the working hours/conditions at par as compared to directly workers engaged by the company. There was no dispute regarding the fact that the petitioner union has raised the demands before the appropriate government. The workers of petitioner union are discharging their duties with utmost sincerity and to the satisfaction of the employer. The agreement or contract executed between the respondents are bogus, sham and camouflage document. The workers of petitioner union are entitled for regularization as they are working continuously for more than 15/16 years and had completed 240 working days in a calendar year. The petitioners are also involved in perennial nature of work, hence, the workers of petitioner union are required to be declared the employees of respondent company. All the documents produced by the respondent put a question mark to its genuineness and authenticity. Not only this, the workers of petitioner are also entitled to all benefits as claimed them by raising the demand charter.

21. Ld. AR for the petitioner has also contended that it is his humble submission that overall supervision and control on the services of the workers of petitioner union was looked by the respondent company. The petitioner/workmen shown on the rolls of the contractor who is name lender contractor are required to be converted into the employment of the company. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be allowed with all consequential service benefits including full back-wages.

22. Per contra, Shri Vivek Kaushal, Ld. Counsel for the respondent company has strenuously argued that the demand charter raised under section 2-k of the Act, derive on the concept of community interest. There is no annexure of employees, who authorizes the petitioner to raise the demand charter, has been placed on record. No direct demand charter can be raised. It is argued that the appropriate government at the threshold did not look into this aspect and had mechanically referred the dispute to this Tribunal. The act of concealment by not arraying the contractors is also reflected. There is no espousal of the dispute. Both Pradhan and General Secretary of the petitioner union nowhere established that who authorizes them to raise the demand notice. The burden of proof lies on the workers to prove the same.

23. Ld. Defense counsel also argued that the question of perennial nature of work is not within the purview of the Tribunal. It is for the appropriate government to examine the matter. The law on the subject is very clear. It is argued that the list of the workers of petitioner union has not been placed on record. The provisions of section 10 are not attracted. There is no pleadings or proof to substantiate the plea. He prayed for the dismissal of the claim petition.

24. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Dy. DA for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

25. Thus, from a careful examination of the entire case record, the workers of petitioner union has sought that the ninety workers those who were shown on the rolls of the name lender contractor be regularized in comparison to the similar situated workers i.e directly engaged by the respondent company and all the consequential benefits may also be granted to the workers of petitioner union at par with the similar situated workmen of the respondent company. The demand notice dated 04.06.2017, which is the origin and genesis of the entire industrial dispute also suggests that the petitioner union wanted to be regularized on the rolls of the respondent company since they have been working in the similar capacity for the last 15/16 years and also involved in the manufacturing process, which is the work of perennial or permanent in nature. This apart, the

petitioner union also claimed the grant of annual increment, bonus etc., as per the regular employees of the company. The perusal of the demand notice dated 04.06.2017, placed on record, as well as the affidavit tendered into evidence by Shri Mohan Lal (PW-1), would go to demonstrate that admittedly, the workers of petitioner union were working through the contractor. The name of the workers union itself clearly specifies so. It is argued from the side of the respondent that the workers of company has its own union. The demand notice issued by the petitioner union on 04.06.2017, Mark PA further credence to the fact that the workers of petitioner union were working on contract basis. The recital in the demand charter itself would clearly demonstrates that the aforesaid workers were working on contract basis through contractors.

26. Though, they were engaged in the works which were in continuous nature. In the very beginning these workers had been engaged on contract through various contractors, moreso, General Secretary of petitioner union Shri Mohan Lal (PW-1) has admitted in the cross-examination that no appointment letter had been issued by the respondent company. The workers of the petitioner union had been engaged on contract basis through the contractor. He also admitted that the work of workers of petitioner union was inspected, maintained and managed by the contractor. He also admitted that they were on contractual employment. He admitted that no complaint was ever filed before the Labour Officer that the supervisor of the company used to inspect the work of contractual workers. He also admitted that presently they are working with the company through contractor Shri Satish Kumar. He feigned ignorance that the salary, EPF, ESI etc., were paid to them by the contractor. He admitted that the workers of the company formed their own union. He further admitted that he is not the member of the union formed by the employees of the company. He also admitted that no complaint was filed for equal pay for equal work under the Contract Labour (Regulation and Abolition) Act, before competent authority. He admitted that no complaint was filed before the Labour Officer regarding the perennial nature of work conducted in the factory premises. He admitted that nature of duties assigned to the contract labour and the workers/employees of the company has not been deciphered in the claim petition, demand notice and the affidavit tendered in to evidence.

27. Such being the situation arises before me, it is crystal clear that the workers of petitioner union are working through the contractor. There is also no evidence produced on record to suggest in any form that initially the workers of petitioner union were engaged or employed by the respondent company directly. The workers of petitioner union, claims regularization with the principal employer i.e the respondent company, and in the alternative service benefits at par with the similar situated workmen of the principal employer. The question of regularization under the principal employer i.e the respondent company can only be granted if the petitioner union is able to prove a relationship of an employer and employee vis-à-vis the respondent company. Although, in the attendant facts and circumstances of the case, it is the case of the respondent company that the workmen of the petitioner union had been engaged through the contractor for various non-perennial work. So, the petitioner union required to prove that the agreements inser-se the respondents was a sham, bogus and was entered into camouflage the real relationship rests on the shoulders of the petitioner union itself. It is settled law that one's who alleges must prove the same on record. As far as grant of same service benefits at par with the workers who have been engaged directly by the respondent company are concerned, in the given facts and circumstances, it is only the contractor who will be held responsible for payment of such benefits, if any. All the codal formalities required for engaging the workers on contractual basis by following the provisions of Act and Contract Labour (Abolition & Regulation) Act, were complied with. The entire case set up from the side of the respondent company had gone unrebutted and unchallenged in view of clear cut admission on the part of the petitioner witness during cross-examination.

28. Verily, Their Lordship of Hon'ble Apex Court in a civil Appeal no. 1799-1800 of 2019 titled as **Bharat Heavy Electrics Ltd. Vs Mahindra Prasad Jakhmola and others decided on 20.2.2019 by relying upon the earlier decision of the Hon'ble Supreme Court in General**

Manager Bengal Nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lala and another's (2011) 1 SCC 635 and Balwant Rai Saluja and another Vs. Air India Ltd. and others (2014) 9 SCC 407 has gone to hold that two well recognized tests to find whether the contract labour are the direct employees of the principle employer are (i) Whether the principal employer pays the salary instead of contractor (ii) whether the principal employer controls and supervises the work of the employees. It has further held that the principal employer cannot be said to control and supervise the work of the employees merely because he directs the workmen of the contractor "what to do", after the contractor assign or allots the employees to the principal employer.

29. Looking into this aspect of the case, what emerges from the evidence on record is that the wage and salary of petitioner union workmen are being paid by the contractor. The record further clearly goes to show that the EPF and ESI contribution of these workers were also being paid by the contractor. The workers of petitioner union has not placed on record any document showing that the contribution towards the ESI and EPF was deposited by the principal employer. There is also no evidence that these twenty two workers were engaged directly at some point of time by the respondent company.

30. Much stress has been urged by the learned AR for the petitioner that these workers were in fact helping the principal employer in the manufacturing process. The witness appearing on behalf of petitioner union (PW-1) has deposed that the workrs of petitioner union used to operate machines. The work was of permanent nature. Unfortunately, he has no idea as to who pays wages to these workers. Over and apart there is no evidence to show that these workmen were working on the machines and helping the principal employer in the manufacturing process. The petitioner union has failed to prove that there was a direct relationship of an employer and an employee with the respondent company. Even their own pleaded case shows that they were working through a contractor. The question of regularization thus cannot be countenanced by the respondent company as there exists no relationship of master and servant between the said respondent and the workers. Unfortunately, the petitioner union has not be able to bring on record the evidence to remotely show that the contract was sham or a camouflage. The overwhelming documentary evidence placed on record by RW-1 in the shape of agreement entered interse respondent company and contractor, cannot be ignored. The oral testimony of the petitioner to contend that they were working on the manufacturing process, tried to substantiated by the deposition of (PW-1) does not seem to convincing. The documentary evidence does show that the labour was being employed by the respondent company through the contractors. No specific evidence has been led to show that the agreements and the other documents were only an eye wash and a camouflage nor there is any clinching conclusive evidence that these workers were made to work on machines and were a part of the manufacturing process.

31. Moreso, the petitioner union has also tried to espouse their cause vis-à-vis the violation of the principles of "equal pay for equal work", in the alternative. No doubt a prayer has been made but no endeavor has been made by the workers to lead evidence to show that the work done by the contractual employees and those employed by the principal employer was same or similar and that the nature of duties of the two, the degree of skill and the dimension of the job was the same. As far as this aspect of the matter is concerned the provisions of **section 25 (2)(v)(a) of the HP Contract Labour (Regulation and Abolition) Himachal Pradesh Rules, 1974** do indeed, in-corporate and provide that the principles of "**equal pay for equal work**" is applicable to the contract employees even. It has been mandated statutorily that the employees engaged by the employer through the contractor who perform the same or similar kind of work must be paid the same wages and facilities as being paid to the employees employed directly by the principal employer of the establishment. The provision further mandates that in case of any controversy whether the workmen employed by the contractor performs the same or similar kind of work as employed directly by the employer, **the Labour Commissioner shall resolve such a dispute and his**

decision shall be final. In the case in hand the violation of the aforesaid provision i.e section 25 of the Contract Labour (Regulation and Abolition) H.P Rules 1974 has been left to the exclusive domain of the Labour Commissioner and his decision has been held to be final. It is a statutory duty cast upon the Labour Commissioner.

32. In so far as concerning the question of parity and grant of facilities as are being enjoyed by the employees directly recruited by the respondent company, the remedy lies not before this Court/Tribunal but before the Labour Commissioner as is provided under Rule 25(v) (a) of the Contract Labour (Regulation and Abolition) Rules, 1974, which reads as under:

“25. (v) (a) in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work.

Provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Labour Commissioner, Himachal Pradesh whose decision shall be final.”

33. The Hon'ble Supreme Court in **Uttar Pradesh Rajya Vidyut Utpadan Vs. Uttar Pradesh Mazdoor Sangh (2009) 17 SCC 318** has also held that the question of parity between the two set of workers i.e those engaged by the contractor and the principal employer has to be resolved by the Labour Commissioner while exercising power under Rule 25 of the State Rule.

34. Furthermore, the petitioners, in the present case have not approached the competent forum under Rule 25 as far as the benefits vis-à-vis parity and grant of similar facilities to such workmen are concerned. Since, the petitioners have failed to prove the relationship of master and servant between respondent company and the workers of petitioner union, the question of regularization perse would not arise, however, the petitioner union can still seek parity, based on the principle of “**equal pay for equal work**”, and even grant of similar facilities as are being enjoyed by the employees directly engaged by the respondent company but by raising it before the competent authority i.e the Labour Commissioner as per the provisions of HP Contract Labour (Regulation and Abolition) Rules, 1974, in vogue and the Contract Labour (Regulation and Abolition) Act, 1970. While the demand notice was raised the competent authority should have at least taken resort to the provisions of Rule 25 (v), since the entire issue hinged upon the applicability of the said Rules and the statutory obligation of the State arising from the Contract Labour (Regulation and Abolition) Act, 1970 and the State Rules in vogue. Apparently no such exercise was done and the matter was sent to this Court as an unresolved dispute. Therefore, it would be expedient and in the interest of justice, **the Labour Commissioner shall peep into the grouse of the petitioners at least vis-à-vis the violation arising out of section 25 (v) of HP Contract Labour Rule, 1974.** The petitioner union will be at liberty to approach the Labour Commissioner for appropriate relief under Rule 25 (2)(v)(a) within a period of 60 days from the passing of this order, who shall dispose of it as expeditiously as possible, un-influenced from the observation made herein.

35. One more significant fact, which prominently comes to the fore and missed the attention of the “appropriate government” was that the said workers were admittedly working with the respondent for the 15/16 years. It is undisputed. Even if doing the work of loading, un-loading and housekeeping, as is alleged, they have been doing so perennially, therefore, it also seems to be incidental to and necessary for the trade and business carried on by the respondent company.

Therefore, the provisions of section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 shall come into play. It inter-alia envisage that the “appropriate government”, may prohibit the Contract Labour in an establishment keeping in view the conditions envisaged in section 10. This however has been left to the exclusive domain of the “appropriate government” and therefore only the Labour Commissioner can look into the feasibility of discontinuing and abolishing contract labour in the establishment of the respondent company. The principles in this behalf have been ably set-out far back in 1995, in **Gujrat Electricity Board, Thermal Power Station, Ukai, Gujarat Vs. Hind Mazdoor Sabha and ors. (1995) LLR 552.** In the aforesaid judgment, the Hon’ble Supreme Court inter-alia directed the appropriate government to undertake and exercise and ensure that establishments which are employing contract labour and fall within the provisions clauses (a) to (d) of section 10 (2) of the Contract Labour (Regulation & Abolition) Act, 1970, should on their own, discontinue the contract labour and absorb as many of the labour as is feasible as their direct employees. The Labour Commissioner may also keeping in view the aforesaid mandate decide the issue accordingly along-with the provisions of section 25 (2)(v)(a) of the H.P Contract Labour (Regulation and Abolition) Rules, 1974. To save the time and the cumbersome procedure the reference is being sent back to the Labour Commissioner to decide the two issues relating to section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and the dispute arising from section 25 (2)(v)(a) of the HP Contract Labour (Regulation & Abolition) Rules, 1974.

36. For the foregoing reasons, the demands raised by the workers of petitioner union vide demand notice charter dated 04.06.2017, vis-à-vis regularization in the respondent company and they be held the workers of respondent company is ordered to be dismissed. However, the remaining demands raised vide demand charter, aforesaid, are ordered to be sent back to the **Labour Commissioner**, who will look into the grouse of the workers of petitioner union at least vis-à-vis the violation arising out of section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 and section 25 (v) of HP Contract Labour Rule, 1974. Both the issues are decided accordingly.

RELIEF

37. As a sequitor, to my foregoing discussion and findings on issues no. 1 & 2, the demands raised by the workers of petitioner union vide demand charter dated 04.06.2017, vis-à-vis regularization in the respondent company and they be held the workers of respondent company is dismissed.

38. However, the remaining demands raised vide demand charter, aforesaid, are ordered to be sent back to the Labour Commissioner, who will peep into the grouse of the petitioners at least vis-à-vis the violation arising out of section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 and section 25 (v) of HP Contract Labour Rule, 1974 and shall decide the said controversy interse the parties in accordance with law after affording reasonable opportunity of being heard to the parties. The reference is decided accordingly.

39. Let a copy of this award be sent to the appropriate government for publication in the official gazette and for further necessary action and a copy of the same be also sent to the Labour Commissioner for compliance.

40. File, after completion, be consigned to records.

Announced in the open Court today this 1st day of June, 2023.

Sd/-

(RAJESH TOMAR),

Presiding Judge,

Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 10 of 2016

Instituted on : 04-03-2016

Decided on : 01-06-2023

Sohail Akhtar s/o Shri Mohammad Akram, r/o Katcha Tank, Nahan, Tehsil Nahan, District Sirmaur, H.P. . .*Petitioner.*

VERSUS

1. Jaswant Singh s/o Late Shri Ram Swroop, r/o VPO Sainwala, Tehsil Paonta Sahib, District Sirmaur, H.P.

2. The Manager, M/s Carlsberg India Pvt. Ltd. Village Tokiyon, P.O. Sainwala, Tehsil Paonta Sahib, District Sirmaur, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Kartik Kumar, Advocate

For respondent No.1 : Ex-parte

For respondent No.2 : Shri Vivek Kaushal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 14.01.2016, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether termination of the services of Sh. Sohail Akhtar s/o Sh. Mohammad Akram, r/o Katcha Tank, Nahan, Tehsil Nahan, Distt. Sirmaur, (H.P.) by Sh. Jaswant Singh s/o Late Sh. Ram Swroop, r/o VPO Sainwala, Tehsil Paonta sahib, Distt. Sirmaur, H.P. (Contractor) or by Employer/Manager. M/s Carlsberg India Pvt. Ltd. Village Tokyon, P.O. Sainwala. Tehsil Paonta Sahib. Distt. Sirmaur, (H.P.) (Principal Employer) w.e.f. 04.4.2015 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer/ management?”

2. Material facts necessary for the disposal of the present claim petition as disclosed by the petitioner in the statement of claim are thus that the petitioner has been working continuously with the respondent since 2010 as Supervisor on monthly salary of ₹3500/-, which was increased upto ₹ 8500/- per month. The petitioner had worked continuously till 27.03.2015. Thereafter, the petitioner had fallen ill and was advised medical rest by the Medical Officer. On 04.04.2015, when the petitioner went on to resume his duties, he was not allowed to join his duties. The petitioner was asked to do the work as labourer and when he objected, the petitioner was ordered not to come for the job. The petitioner was working as supervisor where all the workers used to work under him.

The removal/retrenchment of the petitioner from job is a illegal action on the part of the respondent management, which is not tenable in the eyes of law and is also in complete violation of the salient provisions laid down in the Act. The company intended to adjust some other person in the place of the petitioner. There is a complete voilation of sections 25-F, 25-G and 25-H of the Act.

3. The following prayer clause has been appended at the footnote of the claim petition, which is as under:

"It is therefore respectfully prayed that the petition may kindly be allowed and the following reliefs may kindly be granted:—

- (i) **That the oral retrenchment of the petitioner in violation of principles of natural justice as well as the mandatory statutory provisions of Section 25-F as well as 25-G of the Industrial Disputes Act 1947 may kindly be declared to be void ab-initio.**
- (ii) **That the respondents, more particularly respondent No. 2 may kindly be directed to re-engage the petitioner with back wages, monetary benefits and seniority.**
- (iii) **That the respondents may further be directed to produce the entire record of the present case before this Hon'ble Court.**
- (iv) **That the respondents may kindly be saddled with the entire cost of the present litigation:**

Any other order or direction as deemed fit and proper by this Hon'ble Tribunal under the facts and circumstances of the present case may kindly also be passed in favour of the petitioner."

4. Reply on behalf of respondent no.1 has been filed with the averments that the petitioner was engaged on contract basis for a limited period and on completion of assigned work, his services came to an end. The case pleaded by him do not fall in the ambit of sections 25-F, 25-G and 25-H of the Act. It is therefore prayed that the claim filed by the petitioner may kindly be dismissed.

5. Written reply on behalf of respondent no.2 has also been filed on inter-alia preliminary objection of maintainability, suppression of material fact, cause of action and no relationship of employer and employee.

6. On merits, it is submitted that the petitioner was not engaged by the replying respondent. The petitioner was the employee of independent contractor and since the petitioner was not employed by respondent no.2, there arises no occasion to remove/retrenches his services. There was no relationship either of employer and employee or master and servant in between the parties. The respondent no.1 was independently carrying out his obligations under the contract by engaging his manpower. The work of the petitioner was not the subject matter of supervision or control by the respondent or its officials. The respondent no.2 was not having any authority to the performance of the petitioner as he was the employee of contractor. The petitioner has no right to make any request to the respondent company to reengage him. The petitioner has no right to claim wages and seniority from the respondent company. The provisions of sections 25-F, 25-G and 25-H of the Act are not at all applicable in favour of the petitioner. It is, therefore, prayed that the statement of claim filed by the petitioner is liable to be dismissed.

7. While filing separate rejoinders to the replies filed by respondents, the petitioner controverted the averments made thereto in the replies filed by respondents and by reaffirming and reasserting the contents those already pleaded in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 19.01.2017, as under:—

1. Whether the termination of the services of the petitioner w.e.f. 04.04.2015 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified as alleged? ..OPP.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
3. Whether there is no relationship of employer and employee between the respondent no.2 and the petitioner as alleged? ..OPR.
4. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:—

Issue No. 1	:	No
Issue No. 2	:	Not entitled to any relief
Issue No. 3	:	Yes
Relief.	:	Reference is answered in negative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 to 3.

12. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their final determination and adjudication.

13. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e EPF Slips (PW-1/B) to (PW-1/D), wages slips (PW-1/E) to (PW-1/H), medical certificate (PW-1/J) and copy of canteen requisition slip Mark PX and Mark PX-1.

14. In the cross-examination, on behalf of respondent no.1, he admitted that his claim is only against the respondent no.2 and no relief has been claimed against respondent no.2. He further admitted that the respondent no.2 used to pay the amount of salary to the respondent no.1 who used

to disburse the same to him He also admitted that the respondent no.2 had kept him in service till year 2015 at the instance of respondent no.2 and when the respondent no.2 had asked the respondent no.1 to terminate his service, his services were terminated. He admitted that he was the employee of respondent no.2.

15. When this witness was testified during cross-examination on behalf of respondent no.2, he denied that the respondent no.1 used to disburse the salary to him. He admitted that he had not received any letter from respondent no.2 calling for interview. He admitted that on documents (PW-1/B) to (PW-1/H) the name of the employer is mentioned as Jaswant Singh. He denied that respondent no.1 used to issue him the wage slip (PW-1/E) to (PW-1/H). He admitted that he does not have any identity card and wages slip from respondent no.2. He further admitted that he does not have any appointment letter from respondent no.2.

16. At this juncture, it would be more beneficial to mention here that when the case was listed for the evidence of the respondent no.1., none appeared on his behalf, hence, the respondent no.1, had proceeded against ex-parte as is evident from the order dated 22.11.2018.

17. To refute the allegations of the petitioner, the respondent no.2 had examined Shri Sumeet Kumar, Assistant from the office of ESIC, Baddi as (RW-1), who has brought the summoned record pertaining to the ESI contributions made by one Jaswant Singh contractor w.e.f. Feb., 2011 to 31.3.2026 (RW-1/A). He deposed that the records pertaining to the years 2009 to 2011 are not available as prior to that he records were not online. The contribution of Shri Sohil Akhtar have been deposited *vide* IP No. 1407067963.

18. In cross-examination on behalf of petitioner, he admitted that the workers can be registered and interchanged between the principal employer and contractor.

19. Shri Ganga Ram Thakur, working as Sr. Social Security Assistant, Shimla had stepped into the witness box as (RW-2) and placed on summoned record starting from Jan., 2010 till March 2015 as (RW-2/A). As per record the contribution in respect of one Sohil Akhtar s/o Mohd. Akram was paid by Jaswant Singh from Jan., 2010. In cross-examination, he admitted that the date of joining had not been reflecting in the EPF statement.

20. Shri Anand Kumar, Plant HR Manager of the respondent company had appeared into the witness dock as (RW-3) and tendered into evidence his sworn in affidavit (RW-3/A), wherein he has reiterated almost all the averments as stated in the reply filed on behalf of respondent no.2. He also tendered into evidence copy of attendance register for the years 2009 to 2015 (RW-3/B), record pertaining to ESI for the years 2011 to 2015 Mark RA to Mark RC and licence dated 15.01.2010 Mark RD.

21. In cross-examination, he had categorically admitted that the petitioner was working with the company since 2009. Volunteered that he had been working through contractor Shri Jaswant Singh. He denied that the Jaswant Singh was not the contractor with the respondent in the year 2009. He admitted that the licence given to the Contractor is dated 15.01.2010. He denied that the petitioner was directly recruited by the company in the year 2009. He denied that the petitioner was working as supervisor under the direct supervision and control of HR department of the company since 2009. He feigned his complete ignorance that the petitioner remained under medical treatment since 27.3.2015 till 3.4.2015. He further denied that the petitioner was wrongly shown to be engaged through contractor in record. He also denied that the record pertaining to the petitioner in the attendance register is not produced intentionally. He denied that compliance of sections 25-F and 25-G were not complied by the company.

22. Shri Vijay Pal, Sr. SSA from the office of Provident Fund Shimla (RW-4) has brought the summoned record in respect of the PF contribution paid for the employees of the respondent

company in their code no. 18335 for the period from 2009-10 to April 2015 (RW-4/A), record of contractor Ram Swroop Sharma given/submitted to EPFO (RW-4/B), record of Jaswant Singh submitted at the time of change (RW-4/C). In cross-examination he admitted that the record (RW-4/B), pertains to the year 2003 only. He further admitted that Jaswant Singh had applied for EPF Code in the year 2010.

23. Shri Naresh Kumar, UDC from the office of Regional Office, Baddi had appeared into the witness box as (RW-5) and proved on record the contribution paid in respect of the respondent company for the period from April, 2011 to March, 2015 (RW-5/A), ESI record pertaining to Ram Swroop contractor, which was lateron transferred in the name of Jaswant Singh contractor (RW-5/B) and contribution statement from April 2011 to September 2021 (RW-5/C). In cross-examination, he admitted that all the record mentioned in (RW-5/A) and (RW-5/B) has been initially supplied by the respondent company and contractor. He further admitted that in (RW-5/C), the name of the petitioner is mentioned at serial number 16.

24. Shri Kamal Dev, Senior Assistant from the office of Labour Officer, Sirmaur (RW-6) has proved on record the registration certificate of the company under Contractor Labour Act from the year 2007 till 23.12.2022 (RW-6/A) and the copy of licence issued to the contractor (RW-6/B). In cross-examination, he admitted that the name of the contractor Shri Jaswant Singh is mentioned in (RW-6/A) at page no.5. He further admitted that the renewal of the contractor's licence is renewed from 4.3.2020 till agreement. He also admitted that Shri Jaswant Singh had applied for contractor licence on 15.01.2010.

25. This is the entire oral as well as documentary evidence adduced from the side of the parties.

26. Shri Kartik Kumar, Ld. Counsel for the petitioner has contended with all vehemence that the services of the petitioner had been engaged directly by the respondent company and he had been working as Supervisor under the direct supervision and control HR department of respondent company and had completed 240 working days in each calendar year but his services are wrongly shown on the rolls of the name lender contractor. The petitioner is the employee of the respondent company for all intents and purposes. He further argued that the petitioner suddenly fell ill and after the recovery when he came to resume his duties he was not allowed to do so by the respondent company rather he was asked to work as labourer with the other workers. Before terminating his services neither any notice nor chargesheet was issued to the petitioner. Not only this, neither any notice was issued nor paid compensation to the petitioner as required under section 25-F of the Act, before terminating his services. He further argued that after the illegal retrenchment of the petitioner, the respondent company has retained his junior in job and even recruited new hands in violation of the provisions of section 25-G and 25-H of the Act. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be allowed with all consequential service benefits including full back-wages.

27. Per contra, Shri Vivek Kaushal, Ld. Counsel for the respondent company has strenuously argued that the services of the petitioner were never engaged by the by the respondent company rather he was the employee of the contractor, who deputed the petitioner with the respondent company. The contractor used to pay wages and other benefits under the labour law to the petitioner. It is the contractor who used to supervise the work of the petitioner. Since the petitioner was not the employee of the respondent company, hence, he is not entitled to any relief from the respondent company. He further argued that the petitioner is not covered within the definition of section 2(b) of the Act. He prayed for the dismissal of the claim petition.

28. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

29. Before, proceeding further, I would like to reproduce section 2(s) and 2(oo)(bb) of the Act, which reads as under:—

2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or Administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

2(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

30. Admittedly, the petitioner has not at all proved to the satisfaction of this Tribunal that he was engaged by the respondent company. The appointment was offered to him by the respondent no.1 contractor. Moreso, the petitioner is not at all, in any manner, fairly and squarely covered within the definition of "**Workman**" as provided under section 2(s) of the Act, wherein it is specifically provided that the Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute,

includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person who is subject to the Air Force Act, 1950 or the Army Act, or the Navy Act, or who is employed in the police service or as an officer or other employee of a prison or who is employed mainly in a managerial or Administrative capacity or who, being employed in a supervisory capacity, draws wages exceeding ten thousand per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. It is apt to conclude here that the petitioner has half-heartedly admitted the case pleaded from the side of the respondent company by way of lending credence to the pleadings as well as proof whereby the petitioner had testified his testimony before this Court on oath. The petitioner while appearing into the witness box (PW-1) has categorically admitted during his cross-examination that he had not received any letter from the respondent management for interview. He also admitted that in document the name of the contractor is mentioned. He also admitted that he do not have any identity card or wages slip issued by the respondent management. He also admitted that he do not produce any appointment letter issued by the respondent company. He produced the wages slips issued by the contractor.

31. Verily, the pleaded case of the petitioner is that he was working as Supervisor where all the labourers used to work under him. The petitioner was forced to work as a labourer and was not permitted to work in the company. The petitioner himself pleaded that he was engaged as supervisor in the time office under HR Department. It is clear preposition of law that where there are clear cut admission on the part of the petitioner that he was working in the capacity of supervisor. The nature of job, which is supervisory in nature clearly established that the services of the petitioner are not at all covered within the definition of workman as envisaged under section 2(s) of the Act.

32. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent no.1 or that of respondent no.2. It is by now well settled that the burden of proof is always on the shoulder of the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

33. Faced with the similar situation, it was then contended that as the petitioner was under the direct control and supervision of respondent no.2, he ought to be deemed to be a direct employee of respondent no.2. This cannot be accepted. It has been laid down by the Hon'ble Supreme Court in case titled as *International Airport Authority of India vs. International Air Cargo Workers Union and Anr., (2009) 13 SCC 374* that if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer, but that would not make the worker a direct employee of the principal employer, if the salary is paid by the contractor, if the right to regulate employment is with the contractor and the ultimate supervision and control lies with the contractor. In the present case, as discussed above, the petitioner in his cross-examination has duly admitted that on documents (PW-1/B) to (PW-1/H), the name of the employer is mentioned as Jaswant Singh. He also admitted that he does not have any identity card and wages slip issued by the respondent no.2

34. Our own Hon'ble High Court in case titled as *Agya Ram vs. State of H.P., 2016 (sup.)Him.L.R. 2821*, has held that it is for the petitioner to prove by leading evidence to

demonstrate that the respondents had the control and supervision over them while discharging the official duties. The evidence, both oral and documentary led on record by the petitioner nowhere suggested that he was able to prove employer-employee relationship between him and respondent no.2. No appointment letter issued by respondent no.2 in his favour has been placed on record by the petitioner. Rather, as discussed above, he stood appointed vide an appointment letter issued by respondent no.1 and that the salary was being paid to him by respondent no.1 only. Then, no grain of evidence has been led on record by the petitioner to demonstrate that the primary control and supervision over him lay with respondent no.2 while discharging the official duties.

35. Similarly, in *Mahindra and Mahindra vs. The Presiding Officer and Anr., 2013 (1) LLJ 186*, it has been held by the Hon'ble Punjab and Haryana High Court that once the workman had failed to discharge the burden cast on him as he had failed to lead any evidence to show that he was paid the salary directly by the alleged employer and further that he was working directly under the control and supervision of the alleged employer, he cannot be termed to be an employee of the said employer to entitle him to raise an industrial dispute with it. Since, as per my detailed discussion above, the petitioner has failed to discharge the burden cast upon him, as he has failed to lead evidence to show that he was appointed and was being paid the salary by respondent no.2 only and that he was working directly under its control and supervision, so he cannot be said to be an employee of respondent no.2. Rather, it is apparent that he was an employee of respondent no.1, being his contractor and who was having the primary control and supervision over him.

36. Most importantly, there are plethora of documentary evidence produced on record which clearly showed that the respondent management was duly registered with the Labour Department Government of H.P., vide letter dated 06.08.2007 for engagement of contractual employment along-with the registration certificate also depicts that the respondent no.1 has been found mentioned at serial number 3 as one of the contractor. Similarly, the respondent no.1 was duly authorized by the Licensing Officer, whereby licence was granted to him vide letter dated 15.01.2010. The basic or mandatory requirement of the provisions of Contractor Labour (Regulation & Abolition) Act, 1970 has been duly complied with. There arises no question at all regarding the violation or contravening of the any of the provisions of the Contract Labour Act.

37. Furthermore, it was next contended from the side of the petitioner that his services stood terminated illegally without serving him any notice as required under Section 25-F of the Act, particularly when he was having continuous service of one year anterior to the date of his termination. It was also claimed that persons junior to him were retained and fresh workers had been engaged by the respondents, which was violative of the provisions of Section 25-G and 25-H of the Act. Conversely, it was claimed for respondent no.1 that the services of the petitioner had been engaged for a fixed period of employment, therefore, the termination of his services does not fall within the ambit of term 'retrenchment', as defined in Section 2 (oo) of the Act. Furthermore, the petitioner in his cross-examination on behalf of respondent no.1 contractor has duly admitted that his claim is only against the respondent no.2 and no relief has been claimed against respondent no.1.

38. For the foregoing reasons, and keeping in view the law laid down by the Hon'ble Apex Court & Hon'ble High Court (supra), I am of the considered opinion that the petitioner does not fall within the ambit and scope of definition provided under the head "**workman**" as per the provisions of section 2(s). Further the petitioner was engaged by the respondent no.1 contractor as supervisor under the provision of Contract Labour (Regulation & Abolition) Act, 1970 and he was deputed with respondent no.2 company. Since, the petitioner had worked in the capacity of Supervisor, and that too under the direct control and supervision of respondent no.1 contractor, hence, he is not entitled to any relief from this Court. All these issued are decided accordingly.

39. As a sequitor, to my foregoing discussion and findings on issues no. 1 to 3, the claim filed by the petitioner sanse merit and deserves dismissal and the same is hereby ordered to be dismissed. Resultantly, the reference sent by the appropriate government is answered in negative.

40. Let a copy of this award be sent to the appropriate government for publication in the official gazette and for further necessary action and a copy of the same be also sent to the Labour Commissioner for compliance.

41. File, after completion, be consigned to records.

Announced in the open Court today this 1st day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 35 of 2019

Instituted on : 14-01-2019

Decided on : 01-06-2023

Ashish Ojha s/o Shri Chander Ojha c/o Shri Ram Nath Dwivedi, Village Katra, P.O. Mustafabad, Tehsil Lalganj (Ajhara), District Pratapgarh, UP. *Petitioner.*

VERSUS

The Factory Manager M/s Groupe SEB India (P) Ltd. (formerly known as Maharaja White Line), Village Malku Majra, Tehsil Baddi, District Solan, H.P. *. Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Neelam Sharma, Advocate

For respondent : Shri D.K. Kaushal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 20.12.2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:—

“Whether termination of services of Shri Ashish Ojha s/o Shri Chander Ojha, c/o Shri Ram Nath Dwivedi, Village Katra, P.O. Mustafabad Tehsil lalganj (Ajhara), District Pratapgarh UP by the Factory Manager M/s Groupe SEB India (P) Ltd. (formerly

known as Maharaja White Line), Village Malku Majra, Tehsil Baddi, District Solan, H.P. w.e.f. 04.07.2018 without following the industrial disputes Act, 1947 is legal and justified? If not what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management ?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which both the parties have appeared before this Court.

3. In pursuance to the reference notification, the petitioner has filed statement of claim praying therein that the termination of the petitioner from the service of the respondent may be treated wrong, illegal and of no consequence and the respondent company may be directed to engage/employ the petitioner in service with all consequential benefits from the date of suspension and justice be done. The respondent be directed to pay back-wages and compensation amounting to Rs. one lakhs.

4. By filing reply, the respondent prayed for the dismissal of the claim petition.

5. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 25.02.2022, which reads as under:—

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 4.7.2018 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .OPP.

2. If issue no.1 is proved in affirmative then what relief of service benefits the petitioner is entitled to? . .OPP.

3. Relief

6. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter, while discussing issues for determination, my findings on the point-wise issues, are as under:—

Issue No.1	Decided accordingly
Issue No.2	Decided accordingly
Relief	Reference answered in affirmative being settled, as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1& 2.

9. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their final determination and adjudication.

10. In order to substantiate its case, the petitioner stepped into the witness box as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A). In rebut, the respondent has examined three RWs. (RW-1) Shri Vishal Sethi tendered into evidence his affidavit (RW-1/A), complaint (RW-1/B), show cause notice (RW-1/C), reply (RW-1/D), chargesheet (RW-1/E), reply to chargesheet (RW-1/F), letter dated 23.05.2018 (RW-1/G), letter dated 8.6.2018 (RW-1/H), copy of enquiry report (RW-1/J), suspension letter (RW-1/K), dismissal letter (RW-1/L) and full and final settlement (RW-1/M). (RW-2) Shri Ajay Kumar has tendered in evidence his affidavit (RW-2/A) and (RW-3) Ms.NirmalaKumari has also tendered into evidence her affidavit (RW-3/A).

11. At this stage, Shri Ashish Ojha petitioner has stated at bar that the industrial dispute raised by him has been amicably resolved/settled between the parties as the respondent company has agreed to pay an amount of ₹ 30,000/- towards full and final settlement of the dispute arising out of reference petition no. 35 of 2019. To this effect his statement recorded separately and placed on record.

12. Vide separate statement Rajesh Kumar, Plant Head of respondent company has stated that he has been posted as Plant Head with the respondent company since April 2012. The industrial dispute received from the appropriate government regarding the illegal termination of the services of the petitioner by the respondent w.e.f. 4.7.2018, has been resolved between the parties as the respondent company is ready and willing to pay an amount of ₹ 30,000/- towards full and final settlement. The aforesaid amount shall be paid to the petitioner on or before 26.06.2023 failing which the respondent company shall pay interest @ 9% per annum. The above said statement was read over and explained to them which is duly accepted by them.

13. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised between the parties **as the respondent company is ready and willing to pay a sum of ₹ 30,000/- (Thirty Thousand) to the petitioner** as full and final settlement amount of the claim arising out of reference no. 35 of 2019 on or before 26.06.2023. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 35 of 2019, stood amicably settled between the parties.

14. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the respondent company is directed to pay an amount of ₹ 30,000/- (Thirty Thousand) to the petitioner on or before 26.6.2023 failing which the respondent company shall be liable to pay interest @ 9% per annum from the date of passing of this award/order till the date of its realization.** The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award. Both the issues are decided accordingly.

15. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.06.2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 55 of 2019

Instituted on : 10-06-2019

Decided on : 01-06-2023

Satya Dev s/o Shri Hema Nand Sharma, r/o Village Karana, P.O. Bharana, Tehsil Theog,
District Shimla, H.P. . .Petitioner.

VERSUS

1. The State of HP through Divisional Forest Officer, Forest Division, Theog Tehsil, Theog, District Shimla, H.P.
2. The Block Officer, Forest Block Matiyana, PO Matiyana, Tehsil Theog District Shimla, H.P. . .Respondents.

Application under section 2(A) 2 of Industrial Disputes Act, 1947

For the Petitioner : Ms. Kiran Thakur, Advocate

For the Respondents : Shri Prakash Thakur, Dy. DA

ORDER/AWARD

This is an usual application instituted on behalf of the petitioner in terms of section 2(A) 2 of the Industrial Disputes Act, 1947 (Hereinafter to be referred as the Act) seeking reinstatement into service along-with all consequential benefits, continuity and seniority in the respondent department.

2. Material facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was appointed in the year/month of April 2005 as daily waged beldar and continuously worked with the respondent department till 2009 and had completed 240 working days in each calendar year but his services were orally terminated by the respondent department without following the due process of law. The petitioner immediately after retrenchment raised the demand which remained pending before the Labour Inspector Theog till March 2013. It is further asserted that the FIR No. 8/2009 was registered against the officials of the department being involved in the embezzlement. The petitioner had nothing to do with the said FIR but his services have been terminated without any reason. Juniors to the petitioner S/Shri Piyara Lal and Gurdass were retained in service and their services have been regularized whereas the services of the petitioner have been terminated in violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner has raised the demand notice on 20.7.2017 but no action has been taken by the Labour-cum-Conciliation Officer, Shimla.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore prayed that keeping in view the aforesaid submissions the respondents be directed to reengage the petitioner/claimant with all consequential benefits

including arrears of pay, continuity in service and seniority by declaring termination/retrenchment illegal. Any other relief which this Hon'ble Court may feel fit and proper be also awarded in favour of the petitioner/claimant in the larger interest of justice and equity".

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections qua maintainability.

5. On merits, it is submitted that the petitioner was engaged in Forest Block Matiana, Range Theog of Forest Division on seasonal work during the year 2006 to 2009 and the petitioner had not completed 240 days in any calendar year. The services of the petitioner were never terminated by the respondent rather he himself had abandoned the job at his own sweet will. It is further submitted that the respondent department had not violated the provisions of sections 25-F, 25-G and 25-H of the Act. The demand notice dated 20.07.2017 raised by the petitioner had been decided by the Joint Labour Commissioner vide order dated Jan., 2019. It is, therefore, most humbly prayed that the present application may kindly be dismissed in the interest of justice.

6. Rejoinder to the reply filed by the respondent has not been filed.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 18.09.2021, as under:—

1. Whether the termination of the petitioner is violative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged? . .OPP.
2. If issue no.1 is proved in affirmative, then what relief the petitioner is entitled to? . .OPP.
3. Whether the claim petition is not maintainable, as alleged? If so, its effect thereto? . .OPR .
4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:—

Issue No.1 : Decided accordingly

Issue No.2 : Not entitled to any relief

Issue No.3 : Yes

Relief : Application dismissed as per operative part of award/order.

REASONS FOR FINDINGS

ISSUES NO.1 to 3.

11. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their final determination and adjudication.

12. In order to substantiate its case, the petitioner has examined Shri Rajesh Chauhan, Labour Inspector, Theog as (PW-1), who has placed on record the copy of proceedings (PW-1/A), copy of complaint (PW-1/B) and letter dated 23.02.2010 (PW-1/C) on record. In cross-examination he denied that the documents placed on record are not attested copy of the original.

13. (PW-2) Inspector Balwant Singh, Investigation Officer, Police Station SV & ACB, Shimla has brought on record the copy of muster roll no. 418/2009 (PW-2/A), muster roll no. 417/2009 (PW-2/B). In cross-examination he admitted that except the aforesaid entry to the muster rolls no. 418 and 417 of 2009 there is no other entry recorded in the other muster rolls annexed with the case FIR No. 08/2009 dated 6.3.2009.

14. Shri Tej Ram, Junior Assistant in the office of DFO Theog has appeared into the witness box as (PW-3) to depose that the payment was made to the petitioner against the sanctioned work done in various activities in terms of order passed by this Court through payment voucher (PW-3/A). In cross-examination he admitted that the full and final payment had been made to the petitioner and nothing is due.

15. The petitioner Shri Satya Dev has stepped into the witness box as (PW-4) and tendered into evidence his sworn in affidavit (PW-4/A), wherein he reiterated almost all the averments as made in the application. He also tendered into evidence demand notice (PW-4/B), complaints Mark P-1 to mark P-5, postal receipts Mark P-6, RTI Mark P-7 & P-8, complaint mark P-9, letter Mark P-10, Proceedings Mark P-11 to P-18 and copy of order dated 31.05.2017, Mark P-19.

16. In cross-examination, he denied that he was engaged for seasonal work only. He further denied that he had worked for 118 days in 2006, 151 days in 2007, 145 days in 2008 and 59 days in 2009. He also denied that his services have not terminated by the respondents. He admitted that FIR was lodged by the Vigilance and Anti Corruption Bureau for CAT Plan work of Theog Forest Division. He denied that Shri Pyara Lal Fulfilled the criteria of regularization as per the Policy of the State Government. He denied that after the year 2009, he did not turn up for work.

17. (PW-2) Inspector Balwant Singh, Investigation Officer, Police Station SV & ACB, Shimla has again appeared into the witness box on 4.8.2022 and produced the record pertaining to FIR no. 8 of 2009. He has proved on record the muster rolls no. 52/2008-09 (PW-2/C), muster roll no. 114/2008 (PW-2/D), muster roll no. 375/2008 (PW-2/E), muster roll no. 418/2009 (PW-2/F) and muster roll no. 376 of 2009 (PW-1/G). In cross-examination, he admitted that except the aforesaid entry to the muster roll no. 52, 114, 375 of 2008 and 418 and 376 of 2009, there is no other entry recorded in the other muster rolls annexed with the case FIR No. 8/2009 dated 06.03.2009.

18. Ms. Dolly Thakur, Sr. Assistant of Labour Court Shimla stepped into the witness dock as (PW-5) and proved on record the copy of order dated 31.05.2017 (PW-5/A).

19. (PW-6) Shri Ghanshyam, Clerk in the office of DFO Theog has deposed that as per the record the muster roll maintained by the department are (PW-6/A-1) to (PW-6/A-23). He further

deposed that some of the muster rolls had been obtained by the Police in case FIR No. 8 of 2009. In cross-examination, he admitted that except 23 muster roll produced by him today in the Court there is no other entry recorded in the other muster rolls annexed with the FIR No. 8 of 2009. He further admitted that full & final payment has been made to the petitioner. He also admitted that the petitioner had abandoned the job on his own.

20. In order to rebut, the respondents have examined Shri Bramanand, B.O Matiana as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence copy of muster roll (PW-1/C), on record.

21. In cross-examination, he denied that the petitioner had worked with the respondents since 2003. He denied that the muster roll of the petitioner were not placed on record. He further denied that the working days mentioned in the muster roll and mandays chart are not consistent with each other. He denied that in the year 2009, the work and budget were available with the respondent. He admitted that no notice was issued to the petitioner. He further admitted that the petitioner was not involved in the FIR. He denied that junior persons to the petitioner were engaged and retained in service.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Ms. Kiran Thakur, Learned Counsel for the petitioner has contended with all vehemence that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to “retrenchment”. She further contended that junior persons of the petitioner are still working with the department. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages.

24. *Per contra*, Shri Prakash Thakur, Learned Dy. District Attorney for the respondents urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondents. The petitioner himself abandoned the job without any reason. He also argued that the present petition has been filed by the petitioner after a gap of 8 years, hence, the same is barred by law of limitation. He prayed for the dismissal of the claim petition.

25. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

26. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petitioner by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

(1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.
- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

27. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2-A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he/she has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2-A would clearly postulated and lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2-A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2-A would operate independently. The right available to the workman under Section 2-A is not notwithstanding anything contained in Section 10 of the ID Act.

28. Thus, from a careful examination of the entire case record, the critical question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2-A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2-A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act.

Keeping in view the above enunciation principles of law in mind, bare reading of Section 2-A(3) would lead me to an irresistible conclusion that statutory time period stipulated for invoking the jurisdiction of the Labour Court or the Tribunal, as the case may be, has to be necessarily "**before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)**". Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub- Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

29. Moreso, it is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory in nature. The Hon'ble Apex Court in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

30. Thus, in the background of the dicta of the Apex Court in **Naziruddin's** case referred to supra, when Section 2-A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words "at any time" is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2-A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2-A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2-A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

31. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis since April, 2005 till 2009. It is also an admitted fact that the present industrial dispute has been raised by him after more than 8 years. Furthermore, the present application has been instituted by the petitioner before this

Tribunal directly by preferring the claim petition in the Court, however, he kept on slumbering or slept over the matter for such a pretty long period of time. No efforts were made by him to raise the demand notice before the Appropriate Government or Labour Officer. He had approached this Tribunal directly by invoking the provisions of section 2-A of the Act, whereby Sub Section (3) of Section 2-A dehors the jurisdiction of the Court, hence, it is the duty of the Court/Tribunal to look into the aspect of limitation and to see whether the claim petition is instituted within the limitation or not? If the claim petition is not within the limitation the same is liable to be dismissed, reasons being that the issue of limitation being a jurisdictional fact and if not pleaded then the Tribunal is legally bound to take the note of the fact and decide the matter accordingly. More-so-over, the claim petition has not filed within the prescribed period of limitation and the same is barred by Sub Section (3) of Section 2-A of the Act. Moreover, all the documentary evidence placed on record on behalf of the petitioner i.e copy of proceedings (PW-1/A), copy of complaint (PW-1/B), letter dated 23.02.2010 (PW-1/C), copy of muster roll no. 418/2009 (PW-2/A), muster roll no. 417/2009 (PW-2/B), payment voucher (PW-3/A), demand notice (PW-4/B), muster rolls no. 52/2008-09 (PW-2/C), muster roll no. 114/2008 (PW-2/D), muster roll no. 375/2008 (PW-2/E), muster roll no. 418/2009 (PW-2/F), muster roll no. 376 of 2009 (PW-1/G), copy of order dated 31.05.2017 (PW-5/A), muster roll maintained by the department (PW-6/A-1) to (PW-6/A-23), complaints Mark P-1 to mark P-5, postal receipts Mark P-6, RTI Mark P-7 & P-8, complaint mark P-9, letter Mark P-10, Proceedings Mark P-11 to P-18 and copy of order dated 31.05.2017, Mark P-19 have no relevancy in the case in hand keeping in view the non-maintainability of the present petition as the same is hit by the provisions of sub section 3 of Section 2-A of the Act.

32. For the foregoing reasons and having regard to the law laid down (*supra*) vis-à-vis my aforesaid discussion, the present application filed by the petitioner directly before this Court after an inordinate delay and the statutory expiry of 8 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, all these issues are answered against the petitioner and in favour of respondents.

RELIEF

33. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed for by him. The parties to the lis are hereby left behind to bear their own costs respectively.**

34. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2023.

Sd/-

(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 56 of 2019

Instituted on : 10-06-2019

Decided on : 01-06-2023

Tara Dutt s/o Shri Keshwa Nand, r/o Village & P.O. Bharana, Tehsil Theog, District Shimla, H.P. .*Petitioner.*

VERSUS

1. The State of HP through Divisional Forest Officer, Forest Division, Theog Tehsil, Theog, District Shimla, H.P. .*Respondents.*

2. The Block Officer, Forest Block Matiyana, P.O. Matiyana, Tehsil Theog, District Shimla, H.P. .*Respondents.*

Application under section 2(A) 2 of Industrial Disputes Act, 1947

For the Petitioner : Ms. Kiran Thakur, Advocate

For the Respondents : Shri Prakash Thakur, Dy. DA

ORDER/AWARD

This is an usual application instituted on behalf of the petitioner in terms of section 2(A) 2 of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) seeking reinstatement into service along-with all consequential benefits, continuity and seniority in the respondent department.

2. Material facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was appointed in the year/month of April 2005 as daily waged beldar and continuously worked with the respondent department till 2009 and had completed 240 working days in each calendar year but his services were orally terminated by the respondent department without following the due process of law. The petitioner immediately after retrenchment raised the demand which remained pending before the Labour Inspector Theog till March 2013. It is further asserted that the FIR No. 8/2009 was registered against the officials of the department being involved in the embezzlement. The petitioner had nothing to do with the said FIR but his services have been terminated without any reason. Juniors to the petitioner S/Shri Piyara Lal and Gurdass were retained in service and their services have been regularized whereas the services of the petitioner have been terminated in violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner has raised the demand notice on 20.7.2017 but no action has been taken by the Labour-cum-Conciliation Officer, Shimla.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore prayed that keeping in view the aforesaid submissions the respondents be directed to reengage the petitioner/claimant with all consequential benefits

including arrears of pay, continuity in service and seniority by declaring termination/retrenchment illegal. Any other relief which this Hon'ble Court may feel fit and proper be also awarded in favour of the petitioner/claimant in the larger interest of justice and equity".

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections qua maintainability.

5. On merits, it is submitted that the petitioner was deployed on seasonal work during the year 2005 & 2008 and the petitioner had not completed 240 days in any calendar year. The services of the petitioner were never terminated by the respondent rather he himself had abandoned the job at his own sweet will. It is further submitted that the respondent department had not violated the provisions of sections 25-F, 25-G and 25-H of the Act. The demand notice dated 20.07.2017 raised by the petitioner had been decided by the Joint Labour Commissioner vide order dated Jan., 2019. It is, therefore, most humbly prayed that the present application may kindly be dismissed in the interest of justice.

6. Rejoinder to the reply filed by the respondent has not been filed.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 18.09.2021, as under:

1. Whether the termination of the petitioner is violative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, then what relief the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable, as alleged? If so, its effect thereto? ..OPR.
4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	:	Decided accordingly
Issue No.2	:	Not entitled to any relief
Issue No.3	:	Yes
Relief		Application dismissed as per operative part of award/order.

REASONS FOR FINDINGS

ISSUES NO.1 to 3

11. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their final determination and adjudication.

12. In order to substantiate its case, the petitioner has examined Shri Rajesh Chauhan, Labour Inspector, Theog as (PW-1), who has placed on record the copy of proceedings (PW-1/A), copy of complaint (PW-1/B) and letter dated 23.02.2010 (PW-1/C) on record. In cross-examination he denied that the documents placed on record are not attested copy of the original.

13. (PW-2) Inspector Balwant Singh, Investigation Officer, Police Station SV & ACB, Shimla has brought on record the copy of muster roll no. 418/2009 (PW-2/A), muster roll no. 417/2009 (PW-2/B). In cross-examination he admitted that except the aforesaid entry to the muster rolls no. 418 and 417 of 2009 there is no other entry recorded in the other muster rolls annexed with the case FIR No. 08/2009 dated 6.3.2009.

14. Shri Tej Ram, Junior Assistant in the office of DFO Theog has appeared into the witness box as (PW-3) to depose that the payment was made to the petitioner against the sanctioned work done in various activities in terms of order passed by this Court through payment voucher (PW-3/A). In cross-examination he admitted that the full and final payment had been made to the petitioner and nothing is due.

15. The petitioner Shri Tara Dutt has stepped into the witness box as (PW-4) and tendered into evidence his sworn in affidavit (PW-4/A), wherein he reiterated almost all the averments as made in the application. He also tendered into evidence demand notice (PW-4/B), complaints Mark P-1 to mark P-5, postal receipts Mark P-6, RTI Mark P-7 & P-8, complaint mark P-9, letter Mark P-10, Proceedings Mark P-11 to P-18 and copy of order dated 31.05.2017, Mark P-19.

16. In cross-examination, he denied that he was engaged for seasonal work only. He further denied that he had worked for 59 days in 2005 and 30 days in 2008. He also denied that his services have not been terminated by the respondents. He admitted that FIR was lodged by the Vigilance and Anti Corruption Bureau for CAT Plan work of Theog Forest Division. He denied that Shri Pyara Lal fulfilled the criteria of regularization as per the Policy of the State Government. He denied that after the year 2009, he did not turn up for work.

17. (PW-2) Inspector Balwant Singh, Investigation Officer, Police Station SV & ACB, Shimla has again appeared into the witness box on 4.8.2022 and produced the record pertaining to FIR no. 8 of 2009. He has proved on record the muster rolls no. 52/2008-09 (PW-2/C) and muster roll no. 417/2008 (PW-2/D). In cross-examination, he admitted that except the aforesaid entry to the muster roll no. 52 of 2008 and 417 of 2009, there is no other entry recorded in the other muster rolls annexed with the case FIR No. 8/2009 dated 06.03.2009.

18. Ms. Dolly Thakur, Sr. Assistant of Labour Court Shimla stepped into the witness dock as (PW-5) and proved on record the copy of order dated 31.05.2017 (PW-5/A).

19. (PW-6) Shri Ghanshyam, Clerk in the office of DFO Theog has deposed that as per the record the muster roll maintained by the department are (PW-6/A-1) to (PW-6/A-23). He further deposed that some of the muster rolls had been obtained by the Police in case FIR No. 8 of 2009. In cross-examination, he admitted that except 23 muster roll produced by him today in the Court there is no other entry recorded in the other muster rolls annexed with the FIR No. 8 of 2009. He further admitted that full & final payment has been made to the petitioner. He also admitted that the petitioner had abandoned the job on his own.

20. In order to rebut, the respondents have examined Shri Bramanand, B.O Matiana as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost

all the averments as made in the reply. He also tendered into evidence mandays chart (RW-1/B) and muster roll (RW-1/C), on record.

21. In cross-examination, he denied that the petitioner had worked with the respondents since 2003. He denied that the muster roll of the petitioner were not placed on record. He further denied that the working days mentioned in the muster roll and mandays chart are not consistent with each other. He denied that in the year 2009, the work and budget were available with the respondent. He admitted that no notice was issued to the petitioner. He further admitted that the petitioner was not involved in the FIR. He denied that junior persons to the petitioner were engaged and retained in service.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Ms. Kiran Thakur, Learned Counsel for the petitioner has contended with all vehemence that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to "retrenchment". She further contended that junior persons of the petitioner are still working with the department. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages.

24. *Per contra*, Shri Prakash Thakur, Learned Dy. District Attorney for the respondents urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondents. The petitioner himself abandoned the job without any reason. He also argued that the present petition has been filed by the petitioner after a gap of 8 years, hence, the same is barred by law of limitation. He prayed for the dismissal of the claim petition.

25. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

26. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petitioner by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) **Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) **Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in**

receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."**

27. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2-A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he/she has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2-A would clearly postulated and lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2-A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2-A would operate independently. The right available to the workman under Section 2-A is not notwithstanding anything contained in Section 10 of the ID Act.

28. Thus, from a careful examination of the entire case record, the critical question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2-A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2-A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping in view the above enunciation principles in mind, bare reading of Section 2-A(3) would leads me to an irresistible conclusion that statutory time period stipulated for invoking the jurisdiction of the Labour Court or the Tribunal, as the case may be, has to be necessarily "**before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)**". Time limit for making an application to

the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub- Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

29. Moreso, it is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory in nature. The Hon'ble Apex Court in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

30. Thus, in the background of the dicta of the Apex Court in **Naziruddin's** case referred to supra, when Section 2-A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words "at any time" is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2-A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2-A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2-A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

31. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis since April, 2005 till 2009. It is also an admitted fact that the present industrial dispute has been raised by him after more than 8 years. Furthermore, the present application has been instituted by the petitioner before this Tribunal directly by preferring the claim petition in the Court, however, he kept on slumbering or slept over the matter for such a pretty long period of time. No efforts were made by him to raise the demand notice before the Appropriate Government or Labour Officer. He had approached this Tribunal directly by invoking the provisions of section 2-A of the Act, whereby Sub Section (3) of Section 2-A dehors the jurisdiction of the Court, hence, it is the duty of the Court/Tribunal to look

into the aspect of limitation and to see whether the claim petition is instituted within the limitation or not? If the claim petition is not within the limitation the same is liable to be dismissed, reasons being that the issue of limitation being a jurisdictional fact and if not pleaded then the Tribunal is legally bound to take the note of the fact and decide the matter accordingly. More-so-over, the claim petition has not filed within the prescribed period of limitation and the same is barred by Sub Section (3) of Section 2-A of the Act. Moreover, the documentary evidence placed on record on behalf of the petitioner i.e copy of proceedings (PW-1/A), copy of complaint (PW-1/B), letter dated 23.02.2010 (PW-1/C), copy of muster roll no. 418/2009 (PW-2/A), muster roll no. 417/2009 (PW-2/B), payment voucher (PW-3/A), demand notice (PW-4/B), muster rolls no. 52/2008-09 (PW-2/C), muster roll no. 417/2009 (PW-2/D), copy of order dated 31.05.2017 (PW-5/A), muster roll maintained by the department (PW-6/A-1) to (PW-6/A-23), complaints Mark P-1 to mark P-5, postal receipts Mark P-6, RTI Mark P-7 & P-8, complaint mark P-9, letter Mark P-10, Proceedings Mark P-11 to P-18 and copy of order dated 31.05.2017, Mark P-19 have no relevancy in the case in hand keeping in view the non-maintainability of the present petition as the same is hit by the provisions of sub-section 3 of Section 2-A of the Act .

32. For the foregoing reasons and having regard to the law laid down (*supra*) *vis-à-vis* my aforesaid discussion, the present application filed by the petitioner directly before this Court after an inordinate delay and the statutory expiry of 8 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, all these issues are answered against the petitioner and in favour of respondents.

RELIEF

33. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed for by him. The parties to the lis are hereby left behind to bear their own costs respectively.**

34. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 57 of 2019

Instituted on : 10-06-2019

Decided on : 01-06-2023

Hem Raj s/o Shri Vishnu Dutt Sharma, r/o Village Karana, P.O. Bharana, Tehsil Theog,
District Shimla, H.P. . .Petitioner.

VERSUS

1. The State of HP through Divisional Forest Officer, Forest Division, Theog Tehsil, Theog, District Shimla, H.P.
2. The Block Officer, Forest Block Matiyana, PO Matiyana, Tehsil Theog, District Shimla, H.P. . .Respondents.

Application under section 2(A) 2 of Industrial Disputes Act, 1947

For the Petitioner : Ms. Kiran Thakur, Advocate

For the Respondents : Shri Prakash Thakur, Dy. DA

ORDER/AWARD

This is an usual application instituted on behalf of the petitioner in terms of section 2(A) 2 of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) seeking reinstatement into service along-with all consequential benefits, continuity and seniority in the respondent department.

2. Material facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was appointed in the year/month of April 2005 as daily waged beldar and continuously worked with the respondent department till 2009 and had completed 240 working days in each calendar year but his services were orally terminated by the respondent department without following the due process of law. The petitioner immediately after retrenchment raised the demand which remained pending before the Labour Inspector Theog till March 2013. It is further asserted that the FIR No. 8/2009 was registered against the officials of the department being involved in the embezzlement. The petitioner had nothing to do with the said FIR but his services have been terminated without any reason. Juniors to the petitioner S/Shri Piyara Lal and Gurdass were retained in service and their services have been regularized whereas the services of the petitioner have been terminated in violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner has raised the demand notice on 20.7.2017 but no action has been taken by the Labour-cum-Conciliation Officer, Shimla.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore prayed that keeping in view the aforesaid submissions the respondents be directed to reengage the petitioner/claimant with all consequential benefits including arrears of pay, continuity in service and seniority by declaring termination/retrenchment illegal. Any other relief which this Hon’ble Court may feel fit and proper be also awarded in favour of the petitioner/claimant in the larger interest of justice and equity”.

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections qua maintainability.

5. On merits, it is submitted that the petitioner was deployed on seasonal work during the year 2005 & 2008 and the petitioner had not completed 240 days in any calendar year. The services

of the petitioner were never terminated by the respondent rather he himself had abandoned the job at his own sweet will. It is further submitted that the respondent department had not violated the provisions of sections 25-F, 25-G and 25-H of the Act. The demand notice dated 20.07.2017 raised by the petitioner had been decided by the Joint Labour Commissioner vide order dated Jan., 2019. It is, therefore, most humbly prayed that the present application may kindly be dismissed in the interest of justice.

6. Rejoinder to the reply filed by the respondent has not been filed.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 18.09.2021, as under:

1. Whether the termination of the petitioner is violative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged? . .OPP.

2. If issue no.1 is proved in affirmative, then what relief the petitioner is entitled to? . .OPP.

3. Whether the claim petition is not maintainable, as alleged? If so, its effect thereto? . .OPR .

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	:	Decided accordingly
Issue No.2	:	Not entitled to any relief
Issue No.3	:	Yes
Relief	:	Application dismissed, as per operative part of award/order.

REASONS FOR FINDINGS

ISSUES NO.1 to 3

11. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has examined Shri Rajesh Chauhan, Labour Inspector, Theog as (PW-1), who has placed on record the copy of proceedings (PW-1/A), copy of complaint (PW-1/B) and letter dated 23.02.2010 (PW-1/C) on record. In cross-examination he denied that the documents placed on record are not attested copy of the original.

13. (PW-2) Inspector Balwant Singh, Investigation Officer, Police Station SV & ACB, Shimla has brought on record the copy of muster roll no. 418/2009 (PW-2/A), muster roll no. 417/2009 (PW-2/B). In cross-examination he admitted that except the aforesaid entry to the muster rolls no. 418 and 417 of 2009 there is no other entry recorded in the other muster rolls annexed with the case FIR No. 08/2009 dated 6.3.2009.

14. Shri Tej Ram, Junior Assistant in the office of DFO Theog has appeared into the witness box as (PW-3) to depose that the payment was made to the petitioner against the sanctioned work done in various activities in terms of order passed by this Court through payment voucher (PW-3/A). In cross-examination he admitted that the full and final payment had been made to the petitioner and nothing is due.

15. The petitioner Shri hem Raj has stepped into the witness box as (PW-4) and tendered into evidence his sworn in affidavit (PW-4/A), wherein he reiterated almost all the averments as made in the application. He also tendered into evidence demand notice (PW-4/B), complaints Mark P-1 to mark P-5, postal receipts Mark P-6, RTI Mark P-7 & P-8, complaint mark P-9, letter Mark P-10, Proceedings Mark P-11 to P-18 and copy of order dated 31.05.2017, Mark P-19.

16. In cross-examination, he denied that he was engaged for seasonal work only. He further denied that he had worked for 59 days in 2005 and 30 days in 2008. He also denied that his services have not been terminated by the respondents. He admitted that FIR was lodged by the Vigilance and Anti Corruption Bureau for CAT Plan work of Theog Forest Division. He denied that Shri Pyara Lal fulfilled the criteria of regularization as per the Policy of the State Government. He denied that after the year 2009, he did not turn up for work.

17. (PW-2) Inspector Balwant Singh, Investigation Officer, Police Station SV & ACB, Shimla has again appeared into the witness box on 4.8.2022 and produced the record pertaining to FIR no. 8 of 2009. He has proved on record the muster rolls no. 52/2008-09 (PW-2/C) and muster roll no. 417/2008 (PW-2/D). In cross-examination, he admitted that except the aforesaid entry to the muster roll no. 52 of 2008 and 417 of 2009, there is no other entry recorded in the other muster rolls annexed with the case FIR No. 8/2009 dated 06.03.2009.

18. Ms. Dolly Thakur, Sr. Assistant of Labour Court Shimla stepped into the witness dock as (PW-5) and proved on record the copy of order dated 31.05.2017 (PW-5/A).

19. (PW-6) Shri Ghanshyam, Clerk in the office of DFO Theog has deposed that as per the record the muster roll maintained by the department are (PW-6/A-1) to (PW-6/A-23). He further deposed that some of the muster rolls had been obtained by the Police in case FIR No. 8 of 2009. In cross-examination, he admitted that except 23 muster roll produced by him today in the Court there is no other entry recorded in the other muster rolls annexed with the FIR No. 8 of 2009. He further admitted that full & final payment has been made to the petitioner. He also admitted that the petitioner had abandoned the job on his own.

20. In order to rebut, the respondents have examined Shri Bramanand, B.O Matiana as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence mandays chart (RW-1/B) and muster roll (RW-1/C), on record.

21. In cross-examination, he denied that the petitioner had worked with the respondents since 2003. He denied that the muster roll of the petitioner were not placed on record. He further denied that the working days mentioned in the muster roll and mandays chart are not consistent with each other. He denied that in the year 2009, the work and budget were available with the

respondent. He admitted that no notice was issued to the petitioner. He further admitted that the petitioner was not involved in the FIR. He denied that junior persons to the petitioner were engaged and retained in service.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Ms. Kiran Thakur, Learned Counsel for the petitioner has contended with all vehemence that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to "retrenchment". She further contended that junior persons of the petitioner are still working with the department. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages.

24. *Per contra*, Shri Prakash Thakur, Learned Dy. District Attorney for the respondents urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondents. The petitioner himself abandoned the job without any reason. He also argued that the present petition has been filed by the petitioner after a gap of 8 years, hence, the same is barred by law of limitation. He prayed for the dismissal of the claim petition.

25. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

26. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petitioner by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) **Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) **Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.**
- (3) **The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."**

27. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2-A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he/she has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2-A would clearly postulated and lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2-A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2-A would operate independently. The right available to the workman under Section 2-A is notwithstanding anything contained in Section 10 of the ID Act.

28. Thus, from the careful examination of entire case record, the critical question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2-A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2-A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping in view the above enunciation principles in mind, bare reading of Section 2-A(3) would leads me to an irresistible conclusion that statutory time period stipulated for invoking the jurisdiction of the Labour Court or the Tribunal, as the case may be, has to be necessarily "**before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)**". Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub- Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

29. Moreso, it is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory in nature. The Hon'ble Apex Court

in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908, has held as under:**

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

30. Thus, in the background of the dicta of the Apex Court in **Naziruddin's** case referred to supra, when Section 2-A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words "at any time" is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2-A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2-A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2-A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

31. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis since April, 2005 till 2009. It is also an admitted fact that the present industrial dispute has been raised by him after more than 8 years. Furthermore, the present application has been instituted by the petitioner before this Tribunal directly by preferring the claim petition in the Court, however, he kept on slumbering or slept over the matter for such a pretty long period of time. No efforts were made by him to raise the demand notice before the Appropriate Government or Labour Officer. He had approached this Tribunal directly by invoking the provisions of section 2-A of the Act, whereby Sub Section (3) of Section 2-A dehors the jurisdiction of the Court, hence, it is the duty of the Court/Tribunal to look into the aspect of limitation and to see whether the claim petition is instituted within the limitation or not? If the claim petition is not within the limitation the same is liable to be dismissed, reasons being that the issue of limitation being a jurisdictional fact and if not pleaded then the Tribunal is legally bound to take the note of the fact and decide the matter accordingly. More-so-over, the claim petition has not filed within the prescribed period of limitation and the same is barred by Sub Section (3) of Section 2-A of the Act. Moreover, all the documentary evidence placed on record on behalf of the petitioner i.e copy of proceedings (PW-1/A), copy of complaint (PW-1/B), letter dated 23.02.2010 (PW-1/C), copy of muster roll no. 418/2009 (PW-2/A), muster roll no. 417/2009 (PW-2/B), payment voucher (PW-3/A), demand notice (PW-4/B), muster rolls no. 52/2008-09 (PW-

2/C), muster roll no. 417/2009 (PW-2/D), copy of order dated 31.05.2017 (PW-5/A), muster roll maintained by the department (PW-6/A-1) to (PW-6/A-23), complaints Mark P-1 to mark P-5, postal receipts Mark P-6, RTI Mark P-7 & P-8, complaint mark P-9, letter Mark P-10, Proceedings Mark P-11 to P-18 and copy of order dated 31.05.2017, Mark P-19 have no relevancy in the case in hand keeping in view the non-maintainability of the present petition as the same is hit by the provisions of sub section 3 of Section 2-A of the Act.

32. For the foregoing reasons and having regard to the law laid down (*supra*) vis-à-vis my aforesaid discussion, the present application filed by the petitioner directly before this Court after an inordinate delay and the statutory expiry of 8 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, all these issues are answered against the petitioner and in favour of respondents.

RELIEF

33. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed for by him. The parties to the lis are hereby left behind to bear their own costs respectively.**

34. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 146 of 2019

Instituted on : 16-10-2019

Decided on : 01-06-2023

Hemanand s/o Shri Hira Nand r/o Village Karana, P.O. Bharana, Tehsil Theog, District Shimla, H.P.Petitioner.

VERSUS

1. The State of HP through Divisional Forest Officer, Forest Division, Theog Tehsil, Theog, District Shimla, H.P.

2. The Block Officer, Forest Block Matiyana, P.O. Matiyana, Tehsil Theog, District Shimla, H.P.Respondents.

Application under section 2(A) 2 of Industrial Disputes Act, 1947

For the Petitioner : Ms. Kiran Thakur, Advocate

For the Respondents : Shri Prakash Thakur, Dy. DA

ORDER/AWARD

This is an usual application instituted on behalf of the petitioner in terms of section 2(A) 2 of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) seeking reinstatement into service along-with all consequential benefits, continuity and seniority in the respondent department.

2. Material facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was appointed in the year 2003 as daily waged beldar and continuously worked with the respondent department till 2009 and had completed 240 working days in each calendar year but his services were orally terminated by the respondent department without following the due process of law. The petitioner immediately after retrenchment raised the demand which remained pending before the Labour Inspector Theog till March 2013. It is further asserted that the FIR No. 8/2009 was registered against the officials of the department being involved in the embezzlement. The petitioner had nothing to do with the said FIR but his services have been terminated without any reason. Juniors to the petitioner S/Shri Piyara Lal and Gurdass were retained in service and their services have been regularized whereas the services of the petitioner have been terminated in violation of the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner has raised the demand notice on 14.11.2018 but no action has been taken by the Labour-cum-Conciliation Officer, Shimla.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore prayed that keeping in view the aforesaid submissions the respondents be directed to reengage the petitioner/claimant with all consequential benefits including arrears of pay, continuity in service and seniority by declaring termination/retrenchment illegal. Any other relief which this Hon’ble Court may feel fit and proper be also awarded in favour of the petitioner/claimant in the larger interest of justice and equity”.

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections qua maintainability.

5. On merits, it is submitted that the petitioner was deployed on seasonal work during the year 2005 & 2008 and the petitioner had not completed 240 days in any calendar year. The services of the petitioner were never terminated by the respondent rather he himself had abandoned the job at his own sweet will. It is further submitted that the respondent department had not violated the provisions of sections 25-F, 25-G and 25-H of the Act. The demand notice dated 20.07.2017 raised by the petitioner had been decided by the Joint Labour Commissioner vide order dated Jan., 2019. It is, therefore, most humbly prayed that the present application may kindly be dismissed in the interest of justice.

6. Rejoinder to the reply filed by the respondent has not been filed.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 18.09.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? ..OPP.
2. If issue no.1 is proved in affirmative, then what relief the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable, in the present form as alleged? ..OPR.
4. Whether the petitioner has not approached this Court with clean hands as alleged? ..OPR.
5. Whether the claim of the petitioner is suffered from delay and latches as alleged? ..OPR.
6. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	:	Decided accordingly
Issue No.2	:	Not entitled to any relief
Issue No.3	:	Yes
Issue No. 4	:	No
Issue No.5	:	Yes
Relief	:	Application dismissed, as per operative part of award/order.

REASONS FOR FINDINGS

ISSUES NO.1 to 3 & 5

11. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their final determination and adjudication.

12. In order to substantiate its case, the petitioner has examined Shri Tej Ram, Junior Assistant in the office of DFO Theog who has appeared into the witness box as (PW-1) to depose that the payment was made to the petitioner against the sanctioned work done in various activities in terms of order passed by this Court through payment voucher (PW-1/A). In cross-examination he admitted that the full and final payment had been made to the petitioner and nothing is due.

13. The petitioner Shri Hema Nand has stepped into the witness box as (PW-2) and tendered into evidence his sworn in affidavit (PW-2/A), wherein he reiterated almost all the averments as made in the application. He also tendered into evidence demand notice (PW-2/B), complaints Mark P-1 to mark P-5, postal receipts Mark P-6, RTI Mark P-7 & P-8, complaint mark P-9, letter Mark P-10, Proceedings Mark P-11 to P-18 and copy of order dated 31.05.2017, Mark P-19.

14. In cross-examination, he denied that he was engaged for seasonal work only. He further denied that he had worked for 36 days in 2004, 141 days in 2005, 237 days in 2008, 122 days in 2007, 185 days in 2008 and 31 days in 2009. He also denied that his services have not been terminated by the respondents. He admitted that FIR was lodged by the Vigilance and Anti-Corruption Bureau for CAT Plan work of Theog Forest Division. He denied that Shri Pyara Lal fulfilled the criteria of regularization as per the Policy of the State Government. He admitted that the entire payment has been made in compliance to the order passed by this Court and nothing is due from the department.

15. (PW-3) Shri Rajesh Chauhan, Labour inspector, Theog has placed on record the copy of proceedings (PW-3/A), complaint dated 23.11.2009 (PW-3/8), letter dated 06.01.2010 (PW-3/C) and letter dated 17.02.2010 (PW-3/D) on record. In cross-examination he denied that the documents placed on record are not attested copy of the original.

16. (PW-4) Inspector Balwant Singh, Investigation Officer, Police Station SV & ACB, Shimla has appeared into the witness box and produced the record pertaining to FIR no. 8 of 2009. He has proved on record the muster rolls no. 52/2008-09 (PW-4/A), muster roll no. 188 of 2008 (PW-4/B), muster roll No. 258/2008 (PW-4/C), muster roll no. 296/2008-09 (PW-4/D) and muster roll no. 418 of 2008-9 (PW-4/E). In cross-examination, he admitted that except the aforesaid entry to the muster roll no. 52, 188, 258, 296 of 2008 and 418 of 2009, there is no other entry recorded in the other muster rolls annexed with the case FIR No. 8/2009 dated 06.03.2009.

17. Ms. Dolly Thakur, Sr. Assistant of Labour Court Shimla stepped into the witness dock as (PW-5) and proved on record the copy of order dated 31.05.2017 (PW-5/A).

18. (PW-6) Shri Ghanshyam, Clerk in the office of DFO Theog has deposed that as per the record the muster roll maintained by the department are (PW-6/A-1) to (PW-6/A-23). He further deposed that some of the muster rolls had been obtained by the Police in case FIR No. 8 of 2009. In cross-examination, he admitted that except 23 muster roll produced by him today in the Court there is no other entry recorded in the other muster rolls annexed with the FIR No. 8 of 2009. He further admitted that full & final payment has been made to the petitioner. He also admitted that the petitioner had abandoned the job on his own.

19. In order to rebut, the respondents have examined Shri Bramanand, B.O Matiana as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered into evidence mandays chart (RW-1/B) and muster roll (RW-1/C), on record.

20. In cross-examination, he denied that the petitioner had worked with the respondents since 2003. He denied that the muster roll of the petitioner were not placed on record. He further denied that the working days mentioned in the muster roll and mandays chart are not consistent with each other. He denied that in the year 2009, the work and budget were available with the respondent. He admitted that no notice was issued to the petitioner. He further admitted that the petitioner was not involved in the FIR. He denied that junior persons to the petitioner were engaged and retained in service

21. This is the entire oral as well as documentary evidence adduced from the side of the parties.

22. Ms. Kiran Thakur, Learned Counsel for the petitioner has contended with all vehemence that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to "retrenchment". She further contended that junior persons of the petitioner are still working with the department. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages.

23. *Per contra*, Shri Prakash Thakur, Learned Dy. District Attorney for the respondents urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondents. The petitioner himself abandoned the job without any reason. He also argued that the present petition has been filed by the petitioner after a gap of 9 years, hence, the same is barred by law of limitation. He prayed for the dismissal of the claim petition.

24. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

25. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petitioner by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.
- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

26. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2-A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he/she has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2-A would clearly postulated and lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2-A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2-A would operate independently. The right available to the workman under Section 2-A is notwithstanding anything contained in Section 10 of the ID Act.

27. Thus, from the careful examination of entire case record, the critical question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2-A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2-A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping in view the above enunciation principles in mind, bare reading of Section 2-A(3) would leads me to an irresistible conclusion that statutory time period stipulated for invoking the jurisdiction of the Labour Court or the Tribunal, as the case may be, has to be necessarily "**before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)**". Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub- Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

28. Moreso, it is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory in nature. The Hon'ble Apex Court

in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

29. Thus, in the background of the dicta of the Apex Court in **Naziruddin's** case referred to supra, when Section 2-A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words "at any time" is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2-A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2-A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2-A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

30. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis since 2003 till 2009. It is also an admitted fact that the present industrial dispute has been raised by him after more than 9 years. Furthermore, the present application has been instituted by the petitioner before this Tribunal directly by preferring the claim petition in the Court, however, he kept on slumbering or slept over the matter for such a pretty long period of time. No efforts were made by him to raise the demand notice before the Appropriate Government or Labour Officer. He had approached this Tribunal directly by invoking the provisions of section 2-A of the Act, whereby Sub Section (3) of Section 2-A dehors the jurisdiction of the Court, hence, it is the duty of the Court/Tribunal to look into the aspect of limitation and to see whether the claim petition is instituted within the limitation or not? If the claim petition is not within the limitation the same is liable to be dismissed, reasons being that the issue of limitation being a jurisdictional fact and if not pleaded then the Tribunal is legally bound to take the note of the fact and decide the matter accordingly. More-so-over, the claim petition has not filed within the prescribed period of limitation and the same is barred by Sub Section (3) of Section 2-A of the Act. Moreover, all the documentary evidence placed on record on behalf of the petitioner i.e copy of payment voucher (PW-1/A), copy of demand notice (PW-2/B), copy of proceedings (PW-1/C), complaint dated 23.11.2009 (PW- 3/B), letter dated 06.01.2010 (PW-3/C), letter dated 17.2.2010 (PW-3/D), copy of muster roll no. 52/2008-09 (PW-4/A), muster

roll no. 188/2008 (PW-4/B), muster roll no. 258/2008 (PW-4/C. muster roll no. 296/2008 (PW-4/D), muster roll no. 418/2009 (PW-4/E). copy of order dated 31.05.2017 (PW-5/A), muster roll maintained by the department (PW-6/A-1) to (PW-6/A-23), complaints Mark P-1 to mark P-5, postal receipts Mark P-6, RTI Mark P-7 & P-8, complaint mark P-9, letter Mark P-10. Proceedings Mark P-11 to P-18 and copy of order dated 31.05.2017, Mark P-19, have no relevancy in the case in hand keeping in view the non-maintainability of the present petition as the same is hit by the provisions of sub section 3 of Section 2-A of the Act.

31. For the foregoing reasons and having regard to the law laid down (supra) vis-à-vis my aforesaid discussion, the present application filed by the petitioner directly before this Court after an inordinate delay and the statutory expiry of 8 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, all these issues are answered against the petitioner and in favour of respondents.

ISSUE No. 4

32. In order to prove this issue no evidence has been led by the respondent which could go to show as to how the petitioner has not approached this Court with clean hands. Therefore, in the absence of any evidence in support of this issue, the same is answered against the respondent.

RELIEF

33. As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed for by him. The parties to the lis are hereby left behind to bear their own costs respectively.**

34. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 16 of 2020

Instituted on : 28-02-2020

Decided on : 01-06-2023

Suresh Kumar Mehta s/o Shri Sita Ram Mehta, r/o VPO Dhrogra, Tehsil Sunni, District Shimla, H.P. . Petitioner.

VERSUS

Managing Director, Alchemist Reality Ltd., F-5, Rajeev Gandhi, IT Park Chandigarh.
. Respondent.

Claim petition under section 2-A read-with section 10, 33-A, 33-2(b), 33-C (2) of the Industrial Disputes Act, 1947.

For the petitioner : Shri Nitin Mishra, Advocate

For the respondent : Proceeded *ex-parte*.

AWARD

The present claim petition has been filed by the petitioner under section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act), averring therein that for the fulfillment of the respondent need regarding the security agency, he was engaged and appointed as Security Personnel on 03.02.2008 on monthly remuneration of ₹ 6700/- but no appointment letter had been issued to him by the respondent. The petitioner was working as Security Guard with respondent without any break. The petitioner during his entire tenure of service, did his job with hard work and as such he never received any warning, charge sheet, explanation call or he was never subjected to any domestic inquiry. On 26.01.2019 the petitioner was called by the respondent telephonically upon which the petitioner appeared at head office Chandigarh on 30.01.2019 where the petitioner was forced/ pressurized to give his resignation form the job without any cause. The petitioner was asked by the respondent company not to join the duty from 01.02.2019. The petitioner was illegally removed from employment without any cause and that too in violation of labour law legislation. Neither any notice had been issued nor any compensation was paid to the petitioner as envisaged under Section 25-F of the Act. While wrongfully terminating the services of the petitioner, the respondents have not issued any proper notice U/S 25F of the Industrial Dispute Act, to the petitioner nor any compensation has been paid to the petitioner by the respondents. Moreover, it will not out of place to mention here that the respondent is already in arrear of two months salary. Under this head, the respondent is also liable to pay the following amounts as a arrear of salary to the applicant:—

- a. Overtime payment/ Salary *w.e.f.* June, 2009 to January, 2019 *i.e.* from ₹ 3,71,200/-
 - b. Bonus @₹7,000/- per year for 4 years *i.e.* ₹ 21,000/-
 - c. Gratuity amounting ₹ 70,000/- @₹5 per annum
 - d. Payment regarding un-availed earned leave *i.e.* ₹ 18,000/- from August 2013 to January 2019.
 - e. Litigation Cost plus compensation *i.e.* ₹ 50,000/-
 - f. Retrenchment compensation *i.e.* ₹ 27,000/-

Total ₹ 5.57.200/-

2. The services of the petitioner have been wrongly and unlawfully terminated by the respondent and not only this the valid and legal claim amount has been withheld without any valid

reason by the respondent company, hence, the aforesaid action of the respondent is liable to be set aside.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore, most respectfully prayed that this Hon’ble Court be pleased to answer the reference in favour of workmen holding this retrenchment/ termination to be wholly improper and unjustified and to direct the respondents to pay the claimed amounting ₹ 5,57,200/- alongwith interest.

Any other or further relief, as is deemed just and proper in the facts and circumstances of the case may also be granted in favour of the workmen besides the costs of the proceedings, which would be expedient and in the interest of the justice.”

4. Before, I proceed further, it is important to mention here that the respondent was duly served as per law but they have failed to appear before this Court, hence, proceeded against ex parte, as is evident from zimini order dated 02.03.2020.

5. No rejoinder has been filed.

6. On elucidating the pleading of statement of claim, the following points arises for its final determination, which is as under:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 01.02.2019, is vioaltive of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to?
.....OPP.
2. Relief

7. Henceforth, the petitioner was asked to adduce oral as well as documentary evidence in support of his statement of claim or issues so framed.

8. I have heard the learned AR for the petitioner and have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid points are as under:

Issue No.1	Yes
Relief.	Reference is answered in affirmative awarding reinstatement with seniority and continuity along-with back-wages at the rate of 25% (Twenty Five Percent).

REASONS FOR FINDINGS

ISSUE NO. 1.

10. Henceforth, the petitioner was asked to adduce oral as well as documentary evidence in support of her statement of claim.

11. I have heard the learned Counsel for the petitioner and have also gone through the record of the case carefully.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made in the claim petition. The petitioner also relied upon documents *i.e.* demand notice (PW-1/B), letter dated 08.03.2019 (PW-1/C), rejoinder (PW-1/D), letter dated 23.04.2010 (PW-1/E), abstract of attendance register (PW-1/F), notification dated 22.07.2017 (PW-1/G) and statement of accounts Mark PA.

13. I have given my best anxious considerable thought to the submissions of the Learned Counsel for the petitioner and have also scrutinized the entire case record with minute care, caution and circumspection.

14. Thus, from a careful examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as Security Personnel by the respondent on 03.02.2008. It is also clear that the petitioner had worked with the respondent w.e.f. 03.02.2008 till 30.01.2019, on which date his services were orally terminated by the respondent without issuing any notice and paying retrenchment compensation. It is also proved on record that the petitioner had worked with the respondent continuously and had completed more than 240 working days in preceding twelve calendar months prior to his oral termination. Since, the respondent has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law.

15. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and honest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggests that the respondent has duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) **the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) **the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) **notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

16. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part, reads as under:

“25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case....”*

17. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month’s mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the letter and spirit. The respondent Hotel did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner. **Our own Hon’ble High Court in Civil Writ Petition No. 1440 of 2018 case titled as Prithi Chand Vs. M/s Biogenetic Drugs Pvt. Ltd., decided on 28.10.2022**, has held as under:

“12. Though, learned counsel representing the respondent argued that financial condition of the respondent-company is not good, but material available on record nowhere suggests such plea ever came to be raised before the Tribunal below. However, having taken note of length of service rendered by the petitioner i.e. 13.09.2005 till 27.03.2010 coupled with the fact that services of the petitioner were illegally terminated in violation of the various provisions of the Act, this Court deems it fit to award 50% of the back wages in favour of the petitioner. 13. Consequently, in view of the detailed discussion made hereinabove, the present petition is allowed and impugned award dated 8.05.2018, is quashed and set-aside to the extent that it refuses to grant back wages to the petitioner and respondent is directed to pay 50% of the back wages to the petitioner alongwith up-to-date interest from the date of his termination with seniority and continuity in service, within a period of six weeks from today. Pending applications, if any, also stands disposed of.

18. The entire evidence adduced from the side of the petitioner, both ocular and documentary, had gone unrebutted and unchallenged, on record, before this Court/Tribunal, therefore, no second opinion can be formed therein.

19. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified, hence, the petitioner is held entitled for re-instatement in service on the same post and place with seniority and continuity along-with back-wages at the rate of 25% (Twenty Percent). Accordingly, this point is answered in favour of the petitioner and against the respondent.

RELIEF

20. As a sequel to my above discussion and findings on point no.1, above, the claim of the petitioner succeeds and is hereby allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity coupled with back-wages at the rate of 25% (Twenty Percent) from the date of his illegal termination *i.e. w.e.f. 01.02.2019*. It is expressly made clear that the back-wages awarded in favour of the petitioner shall be paid **within a period of three months from the date of announcement** of the award, failing which interest @ 9% (nine percent) would be payable by the respondent. The reference is disposed off in the aforesaid terms.

21. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st Day of June, 2023.

Sd/-
 (RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील डाडा सीबा, जिला कांगड़ा (हि०प्र०)

श्रीमती पुनमा देवी पत्नी अशोक कुमार, निवासी महाल एवं डा० वैही घमलेहड, तहसील डाडा सीबा,
 जिला कांगड़ा (हि०प्र०) प्रार्थिया।

बनाम

आम जनता

प्रत्यार्थीगण।

उनवान मुकदमा—प्रार्थना—पत्र बाबत जन्म पंजीकरण करवाने बारे।

श्रीमती पुनमा देवी पत्नी अशोक कुमार, निवासी महाल एवं डा० वैही घमलेहड, तहसील डाडा सीबा, जिला कांगड़ा (हि०प्र०) ने इस आशय से न्यायालय में शपथ—पत्र मय प्रार्थना—पत्र अधीन धारा 13(3) अदालत हजा में प्रस्तुत किया है कि उसके पिता त्रिलोक चन्द पुत्र बलदेव सिंह की मृत्यु दिनांक 11-07-1989 को गांव वैही घमलेहड में हुई थी। परिवार रजिस्टर ग्राम पचायत चनौर में प्रार्थिया के पिता की मृत्यु दर्ज न है

जबकि अनुशंसा प्रमाण—पत्र सी० एम० कांगड़ा स्थित धर्मशाला के अनुसार प्रार्थिया के पिता की मृत्यु दिनांक 11-07-1989 को हुई है परन्तु प्रार्थिया के द्वारा उसके पिता का मृत्यु पंजीकरण निर्धारित अवधि के अन्दर ग्राम पंचायत चनौर में अज्ञानता के कारण दर्ज न करवाया गया है। अब प्रार्थिया ने अपने पिता की मृत्यु पंजीकरण दर्ज करवाने का अनुरोध किया है।

अतः इस मृत्यु पंजीकरण बारे सर्वसाधारण आम जनता को बजरिया इश्तहार राजपत्र प्रकाशन व मुश्त्री मुनादी द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त मृत्यु पंजीकरण बारे कोई उजर/एतराज हो तो वह दिनांक 18-11-2023 को प्रातः 10.00 बजे इस मुकदमा की पैरवी हेतु व्यक्तिगत रूप से अथवा किसी अधिकृत एजैन्ट के माध्यम से या किसी अधिवक्ता के माध्यम से इस न्यायालय में उपस्थित आवें। गैरहाजिरी की सूरत में मृत्यु पंजीकरण करने के आदेश पारित कर दिये जायेंगे। बाद मियाद तारीख पेशी कोई उजर/एतराज काबिले गैर न होगा।

आज दिनांक 31-10-2023 को हमारे हस्ताक्षर व मोहर न्यायालय द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
डाढ़ा सीबा, जिला कांगड़ा (हि०प्र०)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, उप—तहसील सुलह,
जिला कांगड़ा (हि०प्र०)**

किस्म मुकदमा : नाम दुरुस्ती

तारीख पेशी : 20-11-2023

विक्रांत ठाकुर पुत्र राकेश कुमार पुत्र उतम सिंह, निवासी पनापरी खास, डा० पनापर, उप—तहसील सुलह, जिला कांगड़ा (हि०प्र०)।

बनाम

आम जनता

विषय.—नाम दुरुस्ती करने हेतु।

प्रार्थी विक्रांत ठाकुर पुत्र राकेश कुमार पुत्र उतम सिंह, निवासी पनापरी खास, डा० पनापर, उप—तहसील सुलह, जिला कांगड़ा (हि०प्र०) ने इस अदालत में प्रार्थना—पत्र मय शपथ—पत्र, आधार कार्ड, राशन कार्ड, स्कूल प्रमाण—पत्र आदि दस्तावेज प्रस्तुत किए कि प्रार्थी का असल नाम विक्रांत ठाकुर पुत्र राकेश कुमार है परन्तु महाल पनापरी खास के राजस्व अभिलेख में अमन कुमार पुत्र राकेश कुमार दर्ज कागजात माल है जोकि गलत है। अतः प्रार्थी अपने नाम की दुरुस्ती करवाकर पनापरी खास के राजस्व अभिलेख में अमन कुमार उपनाम विक्रांत ठाकुर पुत्र राकेश कुमार पुत्र उतम सिंह दर्ज करवाना चाहता है।

अतः इस राजपत्र, इश्तहार द्वारा आम जनता को सूचित किया जाता है कि उपरोक्त नाम की दुरुस्ती करने बारे किसी को कोई उजर/एतराज हो तो वह दिनांक 20-11-2023 को असालतन या वकालतन इस कार्यालय में हाजिर होकर उजर पेश कर सकता है। हाजिर न आने की सूरत में एक तरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 10-10-2023 को हमारे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
सुलह, जिला कांगड़ा (हि०प्र०)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, उप-तहसील सुलह,
जिला कांगड़ा (हि०प्र०)**

किस्म मुकदमा : नाम दुरुस्ती

तारीख पेशी : 23-11-2023

उर्मिला देवी विधवा हरि सिंह पुत्र सन्त राम, निवासी बोदा उपरला, उप-तहसील सुलह, जिला कांगड़ा (हि०प्र०)।

बनाम

आम जनता

विषय.—नाम दुरुस्ती करवाने बारे।

प्रार्थिया उर्मिला देवी विधवा हरि सिंह पुत्र सन्त राम, निवासी बोदा उपरला, उप-तहसील सुलह, जिला कांगड़ा (हि०प्र०) ने इस अदालत में प्रार्थना-पत्र मय आधार कार्ड व परिवार रजिस्टर नकल, ग्राम पंचायत सिहोल से जारी प्रमाण-पत्र आदि दस्तावेज प्रस्तुत किए कि प्रार्थिया के पति का सही नाम हरि सिंह पुत्र सन्त राम है परन्तु महाल बोदा उपरला के राजस्व अभिलेख में सहवन हीरा लाल पुत्र सन्त राम दर्ज कागजात माल है जोकि गलत है। अतः महाल बोदा उपरला के राजस्व अभिलेख में प्रार्थिया के पति के नाम की दुरुस्ती करके हीरा लाल उपनाम हरि सिंह पुत्र सन्त राम दर्ज कागजात माल किया जावे।

अतः राजपत्र हि०प्र०/मुस्त्री मुनादी के माध्यम से आम जनता को सूचित किया जाता है कि उपरोक्त नाम की दुरुस्ती बारे किसी को कोई एतराज हो तो वह दिनांक 23-11-2023 को असालतन या वकालतन इस कार्यालय में हाजिर होकर उजर पेश कर सकता है। हाजिर न आने की सूरत में एक तरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 25-10-2023 को हमारे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
सुलह, जिला कांगड़ा (हि०प्र०)।

**ब अदालत श्री गुंरमुख सिंह, नायब तहसीलदार, बैजनाथ, सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बैजनाथ, जिला कांगड़ा (हि०प्र०)**

श्रीमती कुशान्ता देवी पत्नी श्री देवी सिंह राणा, निवासी गांव वच्छल, डा० चौवीन, तहसील बैजनाथ, जिला कांगड़ा (हि०प्र०)।

बनाम

सर्व जनता चौवीन

विषय.—दरख्वास्त बाबत नाम की दुरुस्ती बारे।

श्रीमती कुशान्ता देवी पत्नी श्री देवी सिंह राणा, निवासी वच्छल, डाठो चौवीन, तहसील बैजनाथ, जिला कांगड़ा (हि०प्र०) ने एक आवेदन—पत्र मय शपथ—पत्र इस आशय के साथ गुजारा है कि प्रार्थिया का नाम ग्राम पंचायत व अन्य दस्तावेजों में कुशान्ता देवी दर्ज है जोकि उसका सही नाम है परन्तु राजस्व रिकार्ड के महाल दनीन में गलती से शान्ता देवी पत्नी देवी सिंह राणा दर्ज हुआ है जोकि गलत है। अब राजस्व रिकार्ड में कुशान्ता देवी दर्ज करवाना चाहती है।

अतः इस इश्तहार द्वारा सर्वसाधारण जनता व हितबद्ध व्यक्तियों को सूचित किया जाता है कि उक्त नाम को दुरुस्त करने बारे किसी भी व्यक्ति को कोई भी आपत्ति हो तो वह दिनांक 29-11-2023 या इससे पूर्व अधोहस्ताक्षरी के समक्ष असालतन या वकालतन उपस्थित होकर अपनी आपत्ति दर्ज कर सकता है। इसके पश्चात् कोई भी एतराज काविले समायत नहीं होगा तथा आवेदन—पत्र पर नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 30-10-2023 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
बैजनाथ, जिला कांगड़ा (हि०प्र०)।

**ब अदालत श्री गुरमुख सिंह, नायब तहसीलदार, बैजनाथ, सहायक समाहर्ता द्वितीय श्रेणी,
तहसील बैजनाथ, जिला कांगड़ा (हि०प्र०)**

निशा देवी सुपुत्री श्रीमती कुल्फी देवी पत्नी बुद्धि सिंह, निवासी गांव सगूर खास, मौजा सगूर, तहसील बैजनाथ, जिला कांगड़ा (हि०प्र०)।

बनाम

सर्व जनता सगूर

विषय.—दरख्वास्त बाबत नाम की दुरुस्ती बारे।

निशा देवी सुपुत्री श्रीमती कुल्फी देवी पत्नी बुद्धि सिंह, निवासी गांव सगूर खास, मौजा सगूर, तहसील बैजनाथ, जिला कांगड़ा (हि०प्र०) ने एक आवेदन—पत्र मय शपथ—पत्र इस आशय के साथ गुजारा है कि प्रार्थिया की माता का नाम ग्राम पंचायत व अन्य दस्तावेजों में कमला देवी दर्ज है जोकि उसकी माता का सही नाम था परन्तु राजस्व रिकार्ड के महाल सगूर खास में गलती से कुल्फी देवी पत्नी बुद्धि सिंह दर्ज हुआ है जोकि गलत है। अब राजस्व रिकार्ड में कमला देवी दर्ज करवाना चाहती है।

अतः इस इश्तहार द्वारा सर्वसाधारण जनता व हितबद्ध व्यक्तियों को सूचित किया जाता है कि उक्त नाम को दुरुस्त करने बारे किसी भी व्यक्ति को कोई भी आपत्ति हो तो वह दिनांक 29-11-2023 या इससे पूर्व अधोहस्ताक्षरी के समक्ष असालतन या वकालतन उपस्थित होकर अपनी आपत्ति दर्ज कर सकता है। इसके पश्चात् कोई भी एतराज काविले समायत नहीं होगा तथा आवेदन—पत्र पर नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 25-10-2023 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
बैजनाथ, जिला कांगड़ा (हि0प्र0)।

**ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार जयसिंहपुर,
जिला कांगड़ा (हि0प्र0)**

मुकद्दमा नं0 : 26/N/2023

तारीख पेशी : 30-11-2023

संजय कुमार पुत्र स्व0 श्री मुन्धी राम, निवासी गांव, डा0 एवं तहसील जयसिंहपुर, जिला कांगड़ा (हि0प्र0) प्रार्थी।

बनाम

आम जनता

प्रतिवादी।

विषय——जन्म व मृत्यु पंजीकरण अधिनियम, 1969 की धारा 13(3) के तहत जन्म पंजीकरण हेतु प्रार्थना—पत्र।

प्रार्थी संजय कुमार पुत्र स्व0 श्री मुन्धी राम, निवासी गांव, डा0 एवं तहसील जयसिंहपुर, जिला कांगड़ा (हि0प्र0) ने इस अदालत में मय कौसल सुरेश कुमार डोगरा हाजिर होकर प्रार्थना—पत्र मय ब्यान हल्फिया पेश किया व आवेदन किया है कि उसकी बहन श्रीमती अनुपमा का जन्म दिनांक 22-05-1982 को गांव, डा0 एवं तहसील जयसिंहपुर, जिला कांगड़ा (हि0प्र0) में हुआ था परन्तु अज्ञानतावश उसके जन्म का पंजीकरण स्थानीय ग्राम पंचायत अभिलेख में दर्ज न करवाया गया है। अतः प्रार्थी इस न्यायालय के माध्यम से जन्म पंजीकरण करने का आदेश स्थानीय ग्राम पंचायत जयसिंहपुर को जारी करवाना चाहता है।

अतः प्रार्थी का आवेदन स्वीकार करते हुए इस इश्तहार मुस्त्री मुनादी व चस्पांगी के माध्यम से प्रतिवादी आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति या संस्था को उक्त श्रीमती अनुपमा की जन्म तिथि 22-05-1982 के पंजीकरण बारे किसी प्रकार की आपत्ति या उजर हो तो वह असालतन या वकालतन तारीख पेशी दिनांक 30-11-2023 को अदालत में हाजिर होकर उजर या एतराज पेश कर सकता है अन्यथा बाद गुजरने तारीख पेशी किसी भी किस्म का उजर एवं एतराज नहीं सुना जावेगा व उक्त श्रीमती अनुपमा का जन्म पंजीकरण करने के आदेश स्थानीय ग्राम पंचायत जन्म व मृत्यु ग्राम पंचायत जयसिंहपुर को पारित कर दिया जाएगा।

यह इश्तहार मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 01-11-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार,
जयसिंहपुर, जिला कांगड़ा (हि0प्र0)।

ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी पंचरुखी, जिला कांगड़ा (हि०प्र०)

किस्म मुकदमा : नाम दुरुस्ती

तारीख पेशी : 25-11-2023

मकलेश कुमार शर्मा

बनाम

सर्वसाधारण एवं आम जनता

प्रार्थना—पत्र बराये नाम दुरुस्ती बारे।

प्रार्थी मकलेश कुमार शर्मा सुपुत्र श्री जगदीश चन्द, निवासी गांव करोर व डा० रजोट, उप-तहसील पंचरुखी, तहसील पालमपुर, जिला कांगड़ा (हि०प्र०) ने इस न्यायालय में प्रार्थना—पत्र पेश किया है कि प्रार्थी का सही नाम मकलेश कुमार शर्मा पुत्र श्री जगदीश चन्द है परन्तु महाल करोर पटवार वृत्त भुआणा जमाबन्दी साल 2020-21 के राजस्व रिकार्ड में कमलेश कुमार पुत्र श्री जगदीश चन्द दर्ज है जोकि गलत है। जबकि असल में उसका नाम मकलेश कुमार शर्मा पुत्र श्री जगदीश चन्द है अतः सम्बन्धित राजस्व अभिलेख में प्रार्थी के नाम की दुरुस्ती के आदेश पारित किए जाएं।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 25-11-2023 को अधोहस्ताक्षरी की अदालत में सुबह 11.00 बजे असालतन या वकालतन हाजिर होकर अपना पक्ष पेश कर सकते हैं। बाद गुजरने मियाद कोई भी उजर या एतराज काबिले समायत न होंगे तथा प्रार्थी के नाम कमलेश कुमार पुत्र श्री जगदीश चन्द के बजाये सही नाम कमलेश कुमार उपनाम मकलेश कुमार शर्मा की दुरुस्ती के आदेश सम्बन्धित राजस्व अभिलेख में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 27-10-2023 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
पंचरुखी, जिला कांगड़ा (हि०प्र०)।

ब अदालत नायब तहसीलदार एवम् सहायक समाहर्ता द्वितीय श्रेणी, भवारना,
जिला कांगड़ा (हि०प्र०)

मुकदमा नं०...../2023

किस्म मुकदमा : मृत्यु पंजीकरण

तारीख पेशी : 22-11-2023

अनिल कुमार पुत्र कर्म चन्द, निवासी गांव व डा० भौरा, उप-तहसील भवारना, जिला कांगड़ा (हि०प्र०)।

बनाम

आम जनता

विषय.—मृत्यु पंजीकरण बारे।

प्रार्थना—पत्र अधीन धारा 13(3) जन्म/मृत्यु पंजीकरण अधिनियम, 1969 के तहत श्री अनिल कुमार पुत्र कर्म चन्द, निवासी गांव व डा० धौरा, उप—तहसील भवारना, जिला कांगड़ा (हि०प्र०) ने इस अदालत में प्रार्थना—पत्र दिया है कि उसके भाई सुशील कुमार पुत्र कर्म चन्द की मृत्यु दिनांक 12—06—2006 को गांव धौरा, उप—तहसील भवारना, जिला कांगड़ा (हि० प्र०) में हुई थी। मगर ग्राम पंचायत धौरा के अभिलेख में दर्ज न है।

अतः इस इश्तहार राजपत्र व मुस्त्री मुनादी चस्पांगी द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि इस मृत्यु पंजीकरण बारे किसी व्यक्ति या संस्था को उजर या एतराज हो तो वह दिनांक 22—11—2023 को सुबह 10.00 बजे असालतन या वकालतन हाजिर होकर उजर प्रस्तुत कर सकता है। बाद गुजरने मियाद कोई भी उजर या एतराज काबिले समायत न होगा तथा प्रार्थी के भाई सुशील कुमार पुत्र कर्म चन्द की मृत्यु दिनांक 12—06—2006 के पंजीकरण के आदेश सम्बन्धित स्थानीय उप—पंजीकार व ग्राम पंचायत विकास अधिकारी को पारित कर दिये जायेंगे।

आज दिनांक 04—10—2023 को मेरे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
भवारना, जिला कांगड़ा (हि०प्र०)।

ब अदालत श्री सलीम आजम (हि०प्र०से०), विवाह पंजीकरण अधिकारी, धीरा,
उप—मण्डल धीरा, जिला कांगड़ा (हि०प्र०)

1. गुरमीत सिंह पुत्र श्री परकाश चन्द, निवासी गांव धोरिया दा लाहड़, डा० कौन, तहसील थुरल,
जिला कांगड़ा, हिमाचल प्रदेश

2. पायल पुत्री श्री राजेन्द्र कुमार, मकान संख्या E-528, स्त संख्या 5, पूर्वी बाबरपुर शाहदरा
दिल्ली—110032 प्रार्थीगण।

बनाम

आम जनता

प्रतिवादी।

आम जनता को सूचित किया जाता है कि प्रार्थीगण एक व दो ने इस न्यायालय में विवाह पंजीकरण करवाने का आवेदन किया है। अतः इस इश्तहार द्वारा आम जनता व उपरोक्त आवेदनकर्ता के माता—पिता को इस विवाह के पंजीकरण बारे एतराज हो तो वह दिनांक 30—11—2023 या इससे पूर्व प्रातः 10 बजे तक इस न्यायालय में आपत्ति दर्ज करवा सकते हैं। इस तिथि के बाद कोई उजर स्वीकार नहीं किया जायेगा।

आज दिनांक 25—10—2023 को मेरे हस्ताक्षर एवं मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
विवाह पंजीकरण अधिकारी,
धीरा, उप—मण्डल धीरा,
जिला कांगड़ा, हिमाचल प्रदेश।

नाम परिवर्तन

मैं, आरजू चावला पुत्री मानिक चावला, मोहल्ला व डाकघर सुल्तानपुर, तहसील व जिला चम्बा (हिं0प्र0) सूचित करती हूं कि मेरे दसवीं/बारहवीं कक्षा के प्रमाण-पत्र में मेरी माता का नाम गलती से कमलेश चावला दर्ज हो गया है, सही नाम ठीना चावला है। नोट करें।

आरजू चावला
पुत्री मानिक चावला,
मोहल्ला व डाकघर सुल्तानपुर,
तहसील व जिला चम्बा (हिं0प्र0)।

CHANGE OF NAME

I, Vinod Kumar s/o Bishambhar Dass, Village Bharmat, P.O. Banuri, Tehsil Palampur, District Kangra (H.P.) declare that in the school record KVS of my daughter name is wrongly entered as shyna *instead* of her correct name Shayna Kashyap.

VINOD KUMAR
*s/o Bishambhar Dass,
Village Bharmat, P.O. Banuri,
Tehsil Palampur, District Kangra (H.P.).*

CHANGE OF NAME

I, Smt. Maya Devi w/o Late JC-116297L Ex. Sub. Krishan Chand, r/o Purana Matour, P.O. Nandehar, Tehsil & District Kangra (H.P.) declare that my name wrongly entered as Bidhia Devi instead of Maya Devi in my husband's service documents.

MAYA DEVI
*w/o Late Sh. Krishan Chand,
r/o Purana Matour, P.O. Nandehar,
Tehsil & District Kangra (H.P.).*

CHANGE OF NAME

I, Sourav s/o Sh. Baldev Singh, r/o Village Karot , P.O. Karot Khas (54/10), Tehsil Sujanpur, District Hamirpur (H.P.) declare that in my education documents my mother's name wrongly entered as REKHA, whereas her correct name is REKHA CHOUDHARY. Please note.

SOURAV
*s/o Sh. Baldev Singh,
r/o Village Karot , P.O. Karot Khas (54/10),
Tehsil Sujanpur, District Hamirpur (H.P.).*

